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Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-734

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF HENRY J. VACCARO, M.D. TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION—ON APPEAL FROM ORDER OF THE DEPARTMENT OF LAW AND PUBLIC SAFETY BOARD OF MEDICAL EXAMINERS

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. _____

In the matter of the Suspension or Revocation of The License of Henry J. Vaccaro, M.D., to Practice Medicine and Surgery in the State of New Jersey.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

PETITION FOR CERTIORARI

The Petitioner, Henry J. Vaccaro, M.D., respectfully prays that a writ of Certiorari issue to review the opinion and order of the Department of Law and Public Safety, Board of Medical Examiners rendered in these proceedings on June 15, 1973.

OPINIONS BELOW

The final decision and order of the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners, is unreported and appears in the Appendix page 212a (separately bound). The opinion of the New Jersey Superior Court, Appellate Division is also unreported and appears at Appendix B (B5). A Petition for Certification was denied by the New Jersey Supreme Court (B9).

JURISDICTION

The Judgment of the Supreme Court of the State of New Jersey denying the Defendant's Petition for Certification was entered on September 16, 1974. This Petition for a Writ of Certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1257 (3).

QUESTIONS PRESENTED

1. Was the refusal to stay the Administrative Hearing pending the disposition of criminal charges arising out of the same incidents a denial of the defendant's Fifth Amendment privilege against self-incrimination and his Fourteenth Amendment rights to due process and a full and fair hearing?

2. Was the refusal of the Appellate Division to allow the Defendant to amend his brief on appeal to allege the defense of entrapment which was inferentially raised at the Administrative Hearing a denial of the Defendant's Fourteenth Amendment right to due process?

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States, Amendment V, in its applicable part states:

" . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

The Constitution of the United States, Amendment 14, Section 1, in its applicable part states:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF FACTS

Dr. Henry J. Vaccaro was the holder of a medical license issued by the State of New Jersey entitling him to practice medicine and surgery. The New Jersey State Board of Medical Examiners on November 28, 1972, issued an Administrative Complaint (6a) and Notice of Hearing (4a) against Dr. Henry J. Vaccaro alleging 39 counts of illegally dispensing controlled dangerous substances to investigators of the Enforcement Bureau, Division of Consumer Affiairs of the State of New Jersey and gave notice of the hearing to be held on December 13, 1972. The stated purpose of the hearing was to consider the matter of the suspension or revocation of said license pursuant to the authority conferred under *N.J.S.A.* 45:9-16.

The Defendant's attorney requested an adjournment of the scheduled hearing date and the adjournment was granted without a new date being set. Thereafter, the Defendant's attorney received notification that a hearing date had been set for May 30, 1973 (24a).

The defendant, Henry Vaccaro, was indicted by the Monmouth County Grand Jury under Indictment No. 799-72 on March 27, 1973, in a 17 Count Indictment presented by the Attorney General of the State of New Jersey and included in said indictment were counts numbered 3, 4 and 5 which alleged criminal violations of *N.J.S.A.* 24: 21-19 involving the same three investigators of the Enforcement Bureau, Division of Consumer Affairs and the same facts which constituted the Administrative charges against the Defendant.

Immediately upon receipt of the notice of the administrative hearing, the attorney for the Defendant notified the Board of Medical Examiners that a full and fair hear-

ing on the proposed suspension or revocation of the doctor's license could not be held in view of the pending criminal matters. They were also informed that the holding of such hearing at this time would violate the defendant's constitutional rights to due process and privilege against self-incrimination, and therefore an adjournment was required (32a).

The Board of Medical Examiners refused to adjourn the hearing (33a). The Defendant then obtained an Order to Show Cause from the Honorable Lawrence A. Carton, Judge of the Appellate Division of the Superior Court directed to the State Board of Medical Examiners seeking to restrain the scheduled hearing (34a). The Defendant, Henry J. Vaccaro, M.D., filed an Affidavit in Support of the Order to Show Cause stating specifically that it was his intention to testify at the administrative hearing; however, he could not do so while the criminal charges were pending without jeopardizing his constitutional rights (36a). On May 25, 1973, the Defendant's requested stay was denied (42a).

Thereafter on May 28, 1973, the Defendant served Notice of Intention to Seek Leave to Appeal to the Supreme Court from the denial of the stay by the Appellate Division and said application was denied by the New Jersey Supreme Court on May 29, 1973 (43a).

The State Board of Medical Examiners on May 30, 1973, held a hearing at which time the Defendant again requested that the matter be adjourned which was denied by the Board (47a).

At this hearing three undercover investigators, Linda Patti, David Moore, and Richard Dominic, were called as witnesses for the State.

Linda Patti testified that she worked for the Enforcement Bureau of the Department of Law and Public

Safety assigned to Dr. Henry J. Vaccaro's office (56a). She was given a false name to use with a false driver's license and she was given a false story to tell as to the reason she was there and was also told by her superior to ask for a specific drug (57a, 83a). She was sent there for the specific purpose of obtaining drugs by giving false information (88a) and made up any lie she could when confronted by the defendant, Dr. Vaccaro, that she was possibly abusing the drug she was given (58a).

David Moore also testified that he worked for the Enforcement Bureau of the Department of Law and Public Safety and was given a false name, false address, false identification and a false story to tell the doctor in order that he could obtain the specific drug he ask for (90a, 91a, 92a). Several times when asked by the defendant, Dr. Vaccaro, what happened to the pills he was given he would create lies such as they were lost, stolen or ruined in the washing machine when left in his pocket (115a).

The last investigator to testify was Richard Craig Dominic who also testified that he was given a false name, address and identification to use along with a false story to present to the defendant in order to obtain a specific drug (138a, 139a, 149a, 14a).

The defendant, Henry Vaccaro, M.D. did not testify at the hearing upon advice of counsel in that the criminal charges were still pending against the doctor and were being prosecuted by the Office of the Attorney General of the State of New Jersey as was the administrative hearing before the Board of Medical Examiners prosecuted by the Office of the Attorney General of the State of New Jersey. No immunity was offered to or granted to the defendant.

The Board of Medical Examiners, which is a Division of Consumer Affairs of the Department of Law and Public Safety of the State of New Jersey, on June 4, 1973, ordered

that Dr. Henry J. Vaccaro's license to practice medicine and surgery, in the State of New Jersey be revoked and that he tender his license to the Board and cease and desist the practice of medicine and surgery (212a).

The Defendant on June 15, 1973 filed a Notice of Appeal from the whole of the final decision and order entered by the New Jersey State Board of Medical Examiners with the Appellate Division of the Superior Court and also gave notice of his application for a restraining order and temporary stay of the action of the State Board of Medical Examiners, said application being made for interim relief to the Honorable Robert A. Matthews, which application was denied (227a, 238a).

On October 24, 1973, the defendant made a motion seeking an Order to file a supplemental brief alleging the defense of entrapment which was inferentially raised by the defendant's counsel at the administrative hearing (207a 208a), (B1). This motion was denied by the Superior Court Appellate Division on November 16, 1973 (B4).

On May 15, 1974, the Superior Court of New Jersey, Appellate Division issued a *per curiam* decision in which they affirmed the Board of Medical Examiners order revoking the defendant's license and held that the defendant's alleged error in refusing to stay the administrative hearing pending the disposition of the criminal charges was without merit (B5).

On May 31, 1974, the defendant filed a notice of petition for certification to the New Jersey Supreme Court (B8).

The Supreme Court of New Jersey denied the defendant, Henry J. Vaccaro's petition for certification on September 16, 1974 (B9).

REASONS FOR GRANTING THE WRIT

(1) ***In refusing to stay the administrative hearing, the defendant's privilege against self-incrimination was violated and his constitutional rights to due process and a full and fair hearing were denied***

Whether one designates a license to practice medicine as a privilege or a property right it is firmly established that one's right to follow his profession is a fundamental element of citizenship and cannot be taken away except for valid reasons which have been determined in an orderly and fair fashion. *Schware v. Board of Bar Examiners,* 353 U.S. 232, (1956); *Greene v. McElroy,* 360 U.S. 474 (1959).

When an administrative hearing is conducted to revoke or suspend a license it is of a quasi-judicial character, and power so exercised must observe the traditional safeguards against arbitrary action and be within the fundamental requisites of due process. These demand a fair and full hearing. *Morgan v. United States,* 304 U.S. 1, (1938); *Juzek v. Hackensack Water Co.* 48 N.J. 302 (Sup. Ct. 1966).

With such power so freely bestowed upon administrative agencies the need that the inexorable safeguards of a full and fair hearing be maintained in its integrity is all the more insistent. *Powhatan Mining Co. v. Icher,* 118 F.2d 105 (CA 6th Cir. 1941); *Garvey v. Freeman,* 397 F.2d 600 (CA 10th Cir. 1968).

The basic elements of a fair and full hearing include the right of each party to be apprised of all the evidence upon which an adjudication rests; a reasonable opportunity to know the claims of the opposing parties, and most im-

portant the right to examine, explain or rebut all such evidence. *Carter v. Kubler*, 320 U.S. 243 (1943); *Federal Trade Commission v. National Lead Company*, 352 U.S. 419 (1957); *Intercontinental Industries, Inc. v. American Stock Exchange*, 452 F.2d 935 (CA 5th Cir. 1971).

One has a right at such an administrative hearing to defend one's self against all charges presented. *Juzek v. Hackensack Water Co., supra; Morgan v. United States, supra.*

Due process requires the fundamental fairness of a full hearing which contemplates that there must be full disclosures. *Garvey v. Freeman, supra; Shuler v. Wainwright*, 341 F. Supp. 1061 (U.S.D.C. Florida 1972).

In order for the defendant to have a full and fair hearing he must be able to present evidence in his defense and also he must be able to testify in his own behalf if he so desires. To deny the defendant such an opportunity to freely testify as defendant, Henry J. Vaccaro, indicated he intended to do, is a denial of his constitutional rights to due process. But beyond that it shows a manifest intent upon the part of the State of New Jersey and the Board of Medical Examiners to be primarily concerned with a conviction and with discovery for the criminal charges then pending. This is evidenced by the intricate lies given the defendant in order to trick him into releasing drugs.

Administrative boards are not unlike courts and in quasi-judicial proceedings they must conduct their hearings and proceedings as to secure a just result. *Williams v. United States*, 241 F. Supp. 535 (1965); *Ford Motor Co. v. N.L.R.B.*, 305 U.S. 364 (1939).

The defendant, Dr. Henry J. Vaccaro, realizing that in order to retain his license it would be necessary to present

evidence and to himself testify at the administrative hearing requested a stay of this hearing until there was a complete disposition of the pending criminal charges against him. If the defendant was to testify at the administrative hearing he might be providing discovery of evidence to the Attorney General's Office who was conducting both prosecutions of the administrative charges and the criminal charges.

To so hold the administrative hearing while the criminal charges are still pending violates the defendant's constitutional rights against self-incrimination.

In *Silver v. McCamey*, 221 F.2d 873 (CADC 1955) the defendant a taxi cab driver was arrested, and charged with two counts of rape on March 1, 1954. While these charges were still pending the Board of Revocation and Review of Hackers' Identification Licenses held a hearing on the same charges for which he was under indictment. As a result of this hearing his license to operate a cab was revoked. The defendant sued to require the Board to return his license. The Court held, " . . . due process is not observed if an accused person is subjected, without his consent, to an administrative hearing on a serious criminal charge that is pending against him. His necessary defense in the administrative hearing may disclose his evidence long in advance of his criminal trial and prejudice his defense in that trial." 221 F.2d 873, 875. This holding has continued to be followed and supported. *United States v. Parrott*, 248 F. Supp. 196 (U.S.D.C. D.C. 1965); *Polemer v. Secretary of the Treasury*, 477 F.2d 1223 (CADC 1973).

The problem is particularly acute for the defendant, Henry J. Vaccaro, for he is being prosecuted for exactly the same acts in both an administrative hearing and a

criminal action which is being prosecuted in both instances by the same state department thereby affording the State of New Jersey complete and total discovery for their criminal case.

The defendant, Henry J. Vaccaro, has throughout these proceedings contended that to hold the administrative hearing while the criminal charges are pending is a violation of his constitutional right against self-incriminations, and his right to due process of law.

The privilege against self-incrimination is the hallmark of our democracy and is certainly available to protect the individual from being compelled to incriminate himself in any manner. This right cannot be abridged. *Miranda v. State of Arizona,* 384 U.S. 436 (1966).

The defendant was being placed in a most perilous position which is forbidden by the Fifth Amendment to the Constitution of the United States. He had a choice to either assert his Fifth Amendment privilege against self-incrimination by not testifying at the administrative hearing conducted by the Board of Medical Examiners and thereby lose his constitutional right to a full and fair hearing or he could choose not to assert his privilege and testify at the administrative hearing thereby revealing his complete defense to the State and incriminating himself as to the pending criminal charges.

A series of recent cases have analyzed the application of the Fifth Amendment and Fourteenth Amendment to situations analogous to the case, *sub judice.*

The case of *Spevack v. Klein,* 385 U.S. 511 (1967) involved an attorney who was the subject of a judicial inquiry alleging professional misconduct. The petitioner was served with a subpoena *duces tecum* and refused to testify. The petitioner's sole defense was that the produc-

tion of certain records and his testimony would tend to incriminate him. The Appellate Division of New York disbarred the petitioner claiming that there was no privilege against self-incrimination in light of the decision in *Cohen v. Hurley,* 366 U.S. 117 (1961).

The Supreme Court of the United States in overruling *Cohen v. Hurley, supra,* declared that the Fifth Amendment's privilege against self-incrimination has been absorbed by the Fourteenth Amendment and extends its protection to lawyers as well as to other individuals.

The Court stated,

> ". . . it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it" (p. 627).

The Court continued:

> "The Fourteenth Amendment secures against State invasion the same privilege that the Fifth Amendment guarantees against federal infringement—the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will and to suffer no penalty for such silence" (p 628).

The penalty referred to above is not merely a fine or imprisonment but includes the imposition of any sanction which would make the exercise of the privilege against self-incrimination costly.

The Court concluded,

> "The threat of disbarment and the loss of professional standing, professional reputation and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege. That threat is indeed as powerful and instrument of compulsion as the use of

> legal process to force from the lips of the accused individual the evidence necessary to convict him" (p. 628).

In *Garrity v. State of New Jersey*, 385 U.S. 493, (1967) appellants were police officers who were subjects in an investigation. Before being questioned, each was warned that anything which they said could be used against them and they could refuse to answer questions relating to possible self-incrimination but if they did refuse, they would be subject to removal from office. The appellants answered the questions and their statements were subsequently used against them resulting in their conviction. The Court held:

> "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice . . . is likely to exert such pressure upon an individual as to disable him from making a free and rational choice" (p. 618).

This Court called the choice between being discharged from his job on the one hand and self-incrimination on the other "a choice between the rock and the whirlpool." With respect to this choice the Court stated:

> "Where the choice is between the rock and the whirlpool duress is inherent in deciding to waive one or the other. It always is for the interest of a party under duress to choose the lesser or two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called" (p. 619).

The defendant, Henry J. Vaccaro, M.D. was given a choice with the threat of incriminating himself on the one hand and the threat of losing his chosen profession by not

having a full and fair hearing on the other. To be placed in such a position where such a choice becomes necessary is a violation of the defendant's constitutional rights.

It has been aptly stated by the United States Supreme Court that "the mandate of the great privilege against self-incrimination does not tolerate the attempt regardless of its ultimate effectiveness to coerce a waiver of the immunity it confers on penalty of the loss of employment." *Gardner v. Broderick*, 392 U.S. 273 (1968); *Uniformed Sanitation Men's Association v. Commissioner of Sanitation of the City of N.Y.*, 392 P.S. 280 (1968).

The defendant, Henry J. Vaccaro, was coerced into making a choice between the whirlpool and the rock and he chose to assert his privilege against self incrimination at the hearing of the Board of Medical Examiners. He was, therefore, denied his constitutionally given right to due process, a full and fair hearing which resulted in the loss of his license to practice medicine and surgery in the State of New Jersey.

After the full disposition of the criminal charges against the defendant, Henry J. Vaccaro, a new administrative hearing before the Board of Medical Examiners must be held to insure the defendant due process and justice.

(2) ***It was a denial of due process of law under the Fourteenth Amendment to refuse to allow the defendant to amend his brief in order to raise the defense of entrapment where such defense was inferentially raised below***

When one is dealing with an administrative hearing he is not confronted with a jury; no formal request to charge is involved, nor are the strict rules of evidence or

of Court followed. Due process, however, must be observed at all times during an administrative hearing. Such due process requires more than just notice and a hearing. It would be a denial of due process if at the administrative hearing they failed to observe that fundamental fairness which is essential to the very concept of justice. *Shuler v. Wainwright*, 341 F. Supp. *supra*, 1061 (U.S.D.C. Florida 1972); *Lisemba v. California*, 314 U.S. 219 (1941).

There can be no doubt that a conviction procured by entrapment is in violation of due process of the law. *Bank v. United States*, 249 F.2d 672 (CA 9th Cir. 1957) and an affront to the basic concepts of justice. *United States v. Chisum*, 312 F. Supp. 1307 (1970).

The Supreme Court of the United States has stated in *Hormel v. Helvering*, 312 U.S. 552 (1941) that:

> "Rules of practice and procedure are devised to promote the ends of justice not to defeat them. A rigid and undeviating judicially declared practice under which Courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with the policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice."

For a Court not to allow a valid defense of entrapment to be raised would result in a manifest miscarriage of justice and the Courts will always consider such question where it is necessary to prevent such a manifest miscarriage of justice. *United States v. Murray*, 492 F.2d 178 (C.A. 9th 1973); *United Brotherhood of Carpenters v. United States*, 330 U.S. 395 (1947); *Lucas v. United States*, 355 F.2d 245 (C.A. 10th Cir. 1966).

Mr. Justice Roberts in *Sorrells v. United States*, 287 U.S. 435, (1932) in a separate decision aptly stated:

> "The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the Court no matter by whom or at what state of the proceedings the facts are brought to its attention."

The defendant, Henry J. Vaccaro, M.D., contends that the action of the three investigators in coming to his office, and presenting false stories for the sole purpose of obtaining specific drugs in order to be able to prosecute the defendant constitutes entrapment as a matter of law.

In *Patty v. Board of Medical Examiners*, 107 Cal. Rpts. 473, (Sup. Ct. 1973) Xavier Suaza, an investigator for the Board of Medical Examiners instructed his part-time investigators to obtain prescriptions for narcotics or dangerous drugs from Dr. Patty. This investigator visited Dr. Patty's office purportedly as a patient, with a request for medication. When the doctor asked her what was the matter she replied nothing but adding that she wanted a prescription for whites or dexies. The doctor gave her a prescription for 100 amphetamine sulfate tablets. The investigator testified that she had related to the doctor that she wanted the dexies to get high. On future occasions Dr. Patty gave prescriptions for amphetamine sulfate and Empirin to four different investigators and received $10.00 for each visit.

The Court reversed the conviction of Dr. Patty on the grounds that such action constituted entrapment in that the investigators did not furnish an occasion or opportunity for the doctor to choose to act on a pre-existing criminal intent to issue prescriptions for either dangerous drugs or narcotics in violation of the law. The Court held that the defense of entrapment "is crucial to the fair

administration of justice" and "if this is true for proceedings before trial Courts, it is no less true for proceedings before administrative agencies" (p. 1126). "Although the defense of entrapment may find application in other administrative proceedings, it is particularly important, when as here, a single agency combines both investigative and adjudicative powers" (p. 1127).

They concluded that " . . . entrapment occurs if the criminal intent is conceived in the mind of the State agent and the accused is lured into the commission of the crime by persuasion or deceitful representation" (p 1129).

The three investigators that were sent to Dr. Henry J. Vaccaro's office were told to procure specific drugs with specific deceitful representations. The defendant did not ask them if they wanted to buy the drugs but was lured into their trap without a chance to act on a pre-existing criminal intent to issue prescriptions or drugs in violation of the law.

A manifest miscarriage of justice will result if the defendant Henry J. Vaccaro's defense of entrapment is not allowed.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Certiorari should be granted.

Respectfully submitted,

THOMAS F. SHEBELL
Counsel for Petitioner

December 10, 1974

APPENDIX B

Motion Seeking an Order to File Supplemental Brief

TO: ANTHONY F. LaBUE, DEPUTY ATTORNEY GENERAL
State of New Jersey-Department of Law and Public Safety Division of Law
1100 Raymond Boulevard,
Newark, New Jersey 07102

Appellant, Henry Vaccaro, M.D., moves for an Order allowing the filing of a supplemental brief, appellant's original brief having been filed with the Court on September 6, 1973.

The appellant, Henry Vaccaro, M.D., so moves for the reason that additional law and defenses have been brought to his attention, said law having been recently decided in other jurisdictions.

There is annexed to this motion a supporting Affidavit setting forth the facts on which it is based.

/s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.
Attorney for Appellant

Dated: October 24, 1973

B2 *Motion Seeking an Order to File Supplemental Brief*

AFFIDAVIT OF THOMAS F. SHEBELL, JR.
(Annexed to Foregoing Motion)

STATE OF NEW JERSEY :
SS
COUNTY OF MONMOUTH :

THOMAS F. SHEBELL, JR., of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am the attorney of record for the defendant-appellant, Henry J. Vaccaro, and am fully familiar with the facts in this case.

2. On September 6, 1973 a brief was filed on behalf of the defendant-appellant setting forth his arguments pertaining to his case. Subsequent to the filing of the brief, defense counsel became aware of an out-of-state case which was similar to the matter now before the Court.

3. The case of Patty v. Board of Medical Examiners, 107 Cal. Rptr. 473, 508 P.2d 1121 (1973) has recently been brought to my attention and it is my desire to brief the issue raised thereon as an additional argument in the pending appeal. That case involved the disciplinary proceeding against a physician for allegedly prescribing narcotic drugs. The issue of entrapment was raised as a defense since state undercover agents were the source of the investigation in question.

4. The defense of entrapment, while not argued below, is now generally recognized as a defense, the above case points out, in an administrative hearing. Since the facts in that case are closely analogous to the Vaccaro case, the Court should have the benefit of an additional brief in the decision to be rendered,

5. It is respectfully submitted that where a valuable and proprietary interest, such as a medical license is concerned, the Court, in the interest of substantial justice and fairness to the defendant, should allow the defendant to raise as a defense, the ground of entrapment and submit a brief in support of his position.

/s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.

NOTARIZED

Order of Appellate Division Denying the Order
(Filed November 19, 1973)

Moving Papers Filed—October 26, 1973

Answering Papers Filed—November 5, 1973

Date Submitted to Court—November 15, 1973

Date Decided—November 16, 1973

ORDER

This matter having been duly presented to the Court, it is hereby ORDERED as follows:

Motion To File Supplemental Brief—Denied

FOR THE COURT:

/s/ Joseph Halpern
JOSEPH HALPERN
P.J.A.D.

Witness, the Honorable JOSEPH HALPERN, Presiding Judge of Part E, Superior Court of New Jersey, Appellate Division, this 16th day of November 1973.

Mortimer G. Newman Jr.
Clerk of the Superior Court

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

Mortimer G. Newman Jr.
Clerk

Final Decision and Order of the Superior Court of New Jersey Appellate Division from the Appeal of the Final Decision and Order of the State of New Jersey Department of Law and Public Safety Division of Consumer Affairs Board of Medical Examiners

Submitted: March 25, 1974—Decided: May 15 '74.

Before Judge Collester, Lynch and Michels.

On appeal from the State Board of Medical Examiners.

Mr. Thomas F. Shebell, attorney for appellant Henry J. Vaccaro, M.D. (Mr. Thomas F. Shebell, Jr. on the brief).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for respondent State Board of Medical Examiners (Mr. George F. Kugler, Jr., former Attorney General, Ms. Virginia Long Annich, Deputy Attorney General, of counsel, Mr. Anthony F. LaBue, Deputy Attorney General, on the brief).

PER CURIAM

The Board of Medical Examiners (Board) served Dr. Henry J. Vaccaro with a Notice of Hearing and a 39 count complaint alleging that he had dispensed drugs without performing adequate examinations, without good medical cause or indication therefor, with apparent disregard for the significant abuse potential of the drugs and with gross disregard for the life, health, safety and welfare of persons contrary to N.J.S.A. 45:9-16(h).

Subsequent to service of the complaint and notice of hearing an 18 count criminal indictment was handed down against Vaccaro. Some of the charges stemmed from the same actions which were the basis for the Board's complaint. Vaccaro asked the Board to postpone the

hearing date pending disposition of the criminal charges. The Board denied the request as did the Appellate Division and the Supreme Court upon Vaccaro's interlocutory petitions.

The hearing was held as scheduled and Dr. Vaccaro was present with his attorney although he did not testify. The Board found him guilty of the charged offenses and ordered that his license to practice medicine and surgery in New Jersey be revoked. He filed a notice of appeal and at the same time applied to this court for a stay of the Board's order pending appeal. The requested stay was denied.

Appellant's initial contentions are that it was error to refuse to stay the hearing and subsequent order of the Board. It is alleged that these refusals violated appellant's right to due process and infringed upon his right against self-incrimination.

As previous denials of the stay by this court and the Supreme Court would indicate there is no merit to these contentions. The Board told appellant prior to the hearing that he was not required to testify and failure to give testimony was "not a ground upon which licensing sanctions or forfeiture may or shall be imposed." There is nothing in the record to indicate that appellant's silence was used against him by the Board in reaching its decision. The right against self-incrimination was exercised without penalty and we can find no violation of due process. See DeVita v. Sills, 422 F.2d 1172 (3rd Cir. 1970); United States v. Simon, 373 F.2d 649 (2d Cir. 1967), cert. granted sub nom Simon v. Wharton, 386 U.S. 1030, dismissed as moot, 389 U.S. 425 (1967).

Appellant next contends that a doctor who testified for the State and concluded that appellant's actions represen-

ted a substantial deviation from standard practice, was presented with inadequate and improper hypothetical questions. We have carefully reviewed each of the three hypothetical questions and find that they adequately set forth the testimony which preceded them. While the testimony indicated that on some occasions drugs were dispensed by appellant's employees when he was not present, and inference could be drawn that he was not unaware of the practice. The omission of references to such incidents in the hypothetical questions was not erroneous. Additionally we note that in view of the nature of the charges and the makeup and expertise of the Board, expert testimony from a doctor was not essential to the State's case. Cf. Jones v. Stess, 111 N.J. Super. 283, 287 (App. Div. 1970).

Finally it is urged that the Board's findings were not supported by sufficient credible evidence in the record. The contention is without merit. The proofs demonstrated that within a nine month period three State investigators, using fictitious names, obtained large quantities of drugs on a regular basis from appellant. In each case the investigator had simply stated that the drugs were needed to stay awake. None of the investigators was adequately examined by appellant. The drugs dispensed had limited medical uses (none of which was to help someone stay awake) but a high potential for abuse.

The credible evidence was sufficient to support the Board's conclusion that contrary to N.J.S.A. 45:9-16(h), appellant had been guilty of gross malpractice and gross neglect in the practice of medicine such as to endanger the life and health of any person.

The Board's order revoking appellant's license is accordingly affirmed.

A TRUE COPY
/s/ Elizabeth McLaughlin
Clerk

Notice of Petition for Certification to the Supreme Court of New Jersey
(Filed May 31, 1974)

Notice is hereby given that appellant, Henry J. Vaccaro, will petition the Supreme Court of New Jersey for certification to the Appellate Division to review the final judgment of the Appellate Division entered in favor of the Board of Medical Examiners in this action on May 15, 1974.

THOMAS F. SHEBELL, JR.

Dated: May 28, 1974.

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

/s/ Elizabeth McLaughlin
ELIZABETH McLAUGHLIN
Clerk

B9

Order Denying the Petition for Certification
(Filed September 16, 1974)

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 16th day of September, 1974.

A TRUE COPY

/s/ Florence R. Peshoe
Clerk

74-734

Supreme Court, U. S.
FILED
DEC 11 1974
MICHAEL RODAK, JR., CLERK

IN THE

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-2968-72

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF HENRY J. VACCARO, M.D. TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION—ON APPEAL FROM ORDER OF THE DEPARTMENT OF LAW AND PUBLIC SAFETY, BOARD OF MEDICAL EXAMINERS

APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

THOMAS F. SHEBELL,
Attorney for Defendant-Appellant,

713 Bangs Avenue,
Asbury Park, New Jersey 07712
(201) 774-1000

N. J. Appellate Printing Co., Inc., Woodbridge, N. J. (201) 636-2030
Call Toll Free (800) 572-2657

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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-2968-72

IN THE MATTER OF THE SUSPENSION
CR REVOCATION OF THE LICENSE OF

Henry J. Vaccaro, M.D.

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Statement of Items Comprising the Record on Appeal
(Filed July 16, 1973)

TO: Elizabeth McLaughlin, Clerk
Superior Court, Appellate Division
State House Annex
Trenton, New Jersey 08625

Thomas F. Shebell, Jr., Esq.
Attorney for Appellant
P.O. Box 720
713 Bangs Avenue
Asbury Park, New Jersey 07712

SIRS:

PLEASE TAKE NOTICE that the New Jersey State Board of Medical Examiners hereby certifies pursuant to R. 2:5-4(b) the following record in the above entitled case. The items comprising the record are as follows:

1. Notice of Hearing, dated November 27, 1972, in an Administrative Action before the New Jersey State Board of Medical Examiners scheduled for December 13, 1972.

2. Complaint by the Secretary of the respondent Board dated November 27, 1972, alleging thirty-nine (39) counts

of gross malpractice or gross neglect in the practice of medicine.

3. Letter dated May 2, 1973 to Henry J. Vaccaro, M.D. from the Board of Medical Examiners advising appellant that the Administrative Hearing has been scheduled for Wednesday, May 30, 1973 at the Holiday Inn in Trenton, New Jersey.

4. Letter dated May 4, 1973 from attorney for appellant to respondent Board requesting an adjournment of administrative hearing until conclusion of criminal prosecution.

5. Letter dated May 7, 1973 from Secretary of respondent Board to attorney for appellant denying adjournment and indicating that appellant would not be compelled to testify.

6. Denial of Motion for Leave to Appeal and Interim Relief (Superior Court, Appellate Division, Part E, Motion No. M-1528-72) dated May 29, 1973.

7. Order of the Supreme Court of New Jersey (M-383 September Term, 1972) denying application for stay of administrative hearing, dated May 29, 1973.

8. Minutes of Meeting of Board of Medical Examiners and transcript of hearing before the New Jersey State Board of Medical Examiners in the Matter of the Suspension or Revocation of the License of Henry J. Vaccaro, M.D. to Practice Medicine and Surgery in the State of New Jersey, dated May 30, 1973.

9. Final Decision and Order of respondent Board dated June 14, 1973, served on appellant on June 14, 1973.

10. Notice of Appeal filed June 15, 1973, from the whole of the Final Decision and Order entered by the New Jersey State Board of Medical Examiners against Jules C. Bigliani, M.D.

The transcript is available in the office of the Attorney General for examination by the Court.

GEORGE F. KUGLER, JR.
Attorney General of New Jersey
Attorney for Respondent

By: /s/ Anthony F. LaBue
ANTHONY F. LaBUE
Deputy Attorney General

DATED: July 13, 1973

Notice of Hearing
(Filed November 28, 1972)

TO: Henry Vaccaro, M.D.
401 Sunset Aevnue
Asbury Park, New Jersey

TAKE NOTICE that complaint has been made to the New Jersey State Board of Medical Examiners, copy of which complaint is hereto annexed, and the said Board will meet at the Rutgers University Campus in the President's Dining Room in Commons on College Avenue opposite Morrell Street in New Brunswick, New Jersey, on Wednesday, December 13, 1972, at nine o'clock in the forenoon to hear said complaint and consider the matter of the suspension or revocation of your license to practice medicine and surgery, pursuant to authority conferred upon the said Board by N.J.S.A. 45:9-16; and you are further notified that if you desire to make defense to such charges or any of them, you may appear either in person or by attorney or both, with your witnesses to answer said charges.

/s/ Anthony J. Balsamo, M.D.
ANTHONY J. BALSAMO, M.D.
Secretary, New Jersey State
Board of Medical Examiners

DATED: 11/27/72

Kindly address all correspondence to:
The New Jersey State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608
Tel. No. 609-292-4843

With carbon copy to:
The Honorable George F. Kugler, Jr.
Attorney General of New Jersey
1100 Raymond Blvd., Room 321
Newark, New Jersey 07102
Attention: Anthony F. LaBue
Deputy Attorney General

Complaint
(Filed November 28, 1972)

STATE OF NEW JERSEY)
: SS
COUNTY OF HUDSON)

I, ANTHONY J. BALSAMO, Secretary of the New Jersey State Board of Medical Examiners, of full age, being duly sworn according to law upon my oath depose and say:

I am informed and believe that one Henry Vaccaro, M.D. of Sunset Avenue, Asbury Park, New Jersey, holder of a license to practice medicine and surgery issued by the New Jersey State Board of Medical Examiners pursuant to authority conferred upon it by N.J.S.A. 45:9-1 et seq. did violate the provisions of N.J.S.A. 45:9-16(h) in that:

COUNT I

On or about March 10, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphethamine 20's to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, and without good medical cause or medical indication therefor, and with apparent lack for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT II

1. Plaintiff repeats the allegations contained in Count I of this complaint as if fully set forth herein or incorporated by reference.

2. On or about April 3, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMeao, which name is fictitious without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT III

1. Plaintiff repeats the allegations contained in Counts I and II of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about April 17, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT IV

1. Plaintiff repeats the allegations contained in Counts I through III of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about May 2, 1972, Henry Vaccaro, M.D., illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's and illegally issued and delivered a prescription script for thirty (30) Tuinal capsules to one Richard DeMaeo, which name is fictitious, without per-

forming an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT V

1. Plaintiff repeats the allegations contained in Counts I through IV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about May 18, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT VI

1. Plaintiff repeats the allegations contained in Counts I through V of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about June 6, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT VII

1. Plaintiff repeats the allegations contained in Counts I through VI of this Complaint as if fully set forth herein illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT VIII

1. Plaintiff repeats the allegations contained in Counts I through VII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 6, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT IX

1. Plaintiff repeats the allegations contained in Counts I through VIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 27, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one

Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT X

1. Plaintiff repeats the allegations contained in Counts I through IX of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 3, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XI

1. Plaintiff repeats the allegations contained in Counts I through X of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 21, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XII

1. Plaintiff repeats the allegations contained in Counts I through XI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about September 7, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's and twenty-eight (28) Biphetamine 12½'s to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XIII

1. Plaintiff repeats the allegations contained in Counts I through XII of this Complaint as if fully set forth herein or incorporated by Reference.

2. On or about September 27, 1972, Henry Vaccaro, M.D. illegally issued and delivered a prescription script for (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indiction therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XIV

1. Plaintiff repeats the allegations contained in Counts I through XIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 11, 1972, Henry Vaccaro, M.D.

illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XV

1. Plaintiff repeats the allegations contained in Counts I through XIV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 26, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XVI

1. Plaintiff repeats the allegations contained in Counts I through XV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about April 3, 1972, Henry Vaccaro, M.D. illegally issued and delivered a prescription script for thirty (30) Obedrin-LA capsules to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical

cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XVII

1. Plaintiff repeats the allegations contained in Counts I through XVI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about April 17, 1972, Henry Vaccaro, M.D. (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lock of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XVIII

1. Plaintiff repeats the allegations contained in Counts I through XVII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about May 2, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XIX

1. Plaintiff repeats the allegations contained in Counts I through XVIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about May 18, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XX

1. Plaintiff repeats the allegations contained in Counts I through XIX of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about June 6, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXI

1. Plaintiff repeats the allegations contained in Counts I through XX of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 11, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor,

with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXII

1. Plaintiff repeats the allegations contained in Counts I through XXI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 26, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXIII

1. Plaintiff repeats the allegations contained in Counts I through XXII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 9, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXIV

1. Plaintiff repeats the allegations contained in Counts I through XXIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 24, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant cause potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXV

1. Plaintiff repeats the allegations contained in Counts I through XXIV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about September 13, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXVI

1. Plaintiff repeats the allegations contained in Counts I through XXV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about September 28, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXVII

1. Plaintiff repeats the allegations contained in Counts I through XXVI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 13, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXVIII

1. Plaintiff repeats the allegations contained in Counts I through XXVIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 26, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without good

medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXIX

1. Plaintiff repeats the allegations contained in Counts I through XXVIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about June 15, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXX

1. Plaintiff repeats the allegations contained in Counts I through XXIX of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about June 26, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXI

1. Plaintiff repeats the allegations contained in Counts I through XXX of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 6, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXII

1. Plaintiff repeats the allegations contained in Counts I through XXXI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about July 27, 1972 Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine, and delivered a prescription script for thirty (30) Parest 400 capsules, to one David Williams, which name is fictitious, of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXIII

1. Plaintiff repeats the allegations contained in Counts I through XXXII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 3, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine, and delivered a prescription script for thirty (30) Parest Capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard of said person.

COUNT XXXIV

1. Plaintiff repeats the allegations contained in Counts I through XXXIII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about August 21, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's twenty-eight (28) Biphetamine 12½'s, and delivered a prescription script for thirty (30) Parest 400 capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXV

1. Plaintiff repeats the allegations contained in Counts I through XXXIV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about September 5, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six

(56) Biphetamine 20's containing amphetamine, and delivered a prescription script for twenty (20) Parest 400 Capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the life, health, safety and welfare of said person.

COUNT XXXVI

1. Plaintiff repeats the allegations contained in Counts I through XXXV of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 4, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's, and delivered a prescription script for thirty (30) Parest 400 capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXVII

1. Plaintiff repeats the allegations contained in Counts I through XXXVI of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 18, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's containing amphetamine, and delivered a prescription script for thirty (30) Parest 400 Capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefore; with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXVIII

1. Plaintiff repeats the allegations contained in Counts I through XXXVII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about October 25, 1972, Henry Vaccaro, M.D. delivered a prescription script for twenty (20) Parest 400 Capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

COUNT XXXIX

1. Plaintiff repeats the allegations contained in Counts I through XXXVII of this Complaint as if fully set forth herein or incorporated by reference.

2. On or about November 2, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's containing amphetamine, and delivered a prescription script for twenty (20) Parest capsules, to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefor, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

The above described allegations separately and in combination indicate that Henry Vaccaro, M.D. has been guilty of gross malpractice or gross neglect in the practice of medicine which has endangered the health and life of one or more persons,

WHEREFORE, it is respectfully demanded that the Board of Medical Examiners of the State of New Jersey suspend or revoke the medical and surgical license of Henry Vaccaro, M.D.

/s/ Anthony J. Balsamo, M.D.
Secretary, New Jersey State
Board of Medical Examiners

NOTARIZED

Letter Dated May 2, 1973 to Board of Medical Examiners from Alfred J. Schuster
(Filed May 4, 1973)

Henry J. Vaccaro, M.D.
401 Sunset Avenue
Asbury Park, New Jersey 07712

Re: In the Matter of the Suspension or Revocation of the License of
Henry J. Vaccaro, M.D.
To Practice Medicine and Surgery
In the State of New Jersey

Dear Doctor Vaccaro:

Please be advised that the Hearing in the above captioned matter will be held on Wednesday, May 30, 1973, at 9:00 A.M. in the Holiday Inn of Trenton, Calhoun & West State Streets in Trenton, New Jersey in the Rider Room.

You are further advised to consider that the Notice of Hearing and Complaint served upon you on November 27, 1972 to be in full force and effect.

Very truly yours,
/s/ Alfred J. Schuster/pwd
ALFRED J. SCHUSTER
Executive Secretary

AJS:pwd

CERTIFIED MAIL R.R.R. #183694

cc: Thomas F. Shebell, Jr., Esq.R.R.R.#183695
713 Bangs Avenue
P. O. Box 720
Asbury Park, New Jersey 07712

Anthony F. LaBue, Esq.
Deputy Attorney General
1100 Raymond Blvd.—Room #321
Newark, New Jersey 07102

Indictment No. 799-72 in the Superior Court of New Jersey, Monmouth County Law Division—Criminal
(Filed March 27, 1973)

COUNT I

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that on or about January 10, 1972, the said DR. HENRY VACCARO did distribute, dispense and sell to the said ANTHONY SENCERA certain controlled dangerous substances to wit Methadone and Tuinal, in a gross and negligent manner and with wanton disregard for the health and safety of the said ANTHONY SENCERA resulting in the death of the said ANTHONY SENCERA on or about January 12, 1972, thereby feloniously killing the deceased, contrary to the provisions of N.J.S. 2A:113-5 against the peace of this State, the Government and dignity of the same.

COUNT II

The Grand Jurors of the State of New Jersey for the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on or about January 10, 1972, did distribute, dispense and sell controlled dangerous substances to wit Methadone and Tuinal to the said ANTHONY SENCERA and the said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT III

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR.

HENRY VACCARO on and between March 10, 1972, and November 15, 1972, on 16 different occasions, distributed, dispensed and sold to the said RICK DOMENIC certain controlled dangerous substances to wit Biphetamines 20's, Biphetamines 12½'s and Tuinal, said distributing, and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24-21-19 against the peace of this State, the Government and dignity of the same.

COUNT IV

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between April 3, 1972, and November 21, 1972, on 15 different occasions, distributed, dispensed and sold to the said LINDA RUTZ certain controlled dangerous substances to wit Oberdrine and Biphetamines 20's, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24-21-19 against the peace of this State, the Government and dignity of the same.

COUNT V

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between June 15, 1972, and November 15, 1972, on 12 different occasions, distributed, dispensed and sold to the said DAVID MOORE certain controlled dangerous substances to wit Biphetamines 20's, Parest 400, Biphetamines 12½'s and Tuinal, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of his professional practice, contrary to the provisions

of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT VI

The Grand Jurors of the State of New Jersey for the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between August 17, 1971, and August 15, 1972, on 18 different occasions, distributed, dispensed and sold to the said PHIL PICHIOTTI certain controlled dangerous substances to wit Tuinal, Seconal, Sodium Ambutol, Seco Barbutol, and Nebutol, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT VII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between March 28, 1970, and November 24, 1972, on 45 different occasions, distributed, dispensed and sold to the said PETER ROBSON, a/k/a PETER MASSI certain controlled dangerous substances to wit Biphetamines 20's, Seconol, Doriden, Dex Amphetamine, Desbutol, Desoxyn, and Seco Barbutol, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24-21-19 against the peace of this State, the Government and dignity of the same.

COUNT VIII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR.

HENRY VACCARO on and between March 24, 1972, and November 6, 1972, on 9 different occasions, distributed, dispensed and sold to said PAUL HUDDY certain controlled dangerous substances to wit Biphetamines 20's, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT IX

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between November 26, 1971, and January 13, 1973, on 10 different occasions, distributed, dispensed and sold to the said MICHAEL NEWCOMBE certain controlled dangerous substances to wit Biphetamines 20's and Seconal, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT X

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between January 22, 1972, and October 2, 1972, on 79 different occasions, distributed, dispensed and sold to the said DEBRA EVANS certain controlled dangerous substances to wit Tuinal, Seconal, Doriden, Methadone, and Optimol, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT XI

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between July 6, 1972, and August 8, 1972, on 20 different occasions, distributed, dispensed and sold to the said THERESIA DELL certain controlled dangerous substances to wit Methadone and Tuinal, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT XII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on December 8, 1971, and January 6, 1972, distributed, dispensed and sold to the said RICHARD JOHNSON certain controlled dangerous substances to wit Tuinal, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT XIII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. VACCARO on and between March 18, 1970, and November 22, 1972, on 122 different occasions, distributed, dispensed and sold to the said RAYMOND OWENS certain controlled dangerous substances to wit Percodan and Doriden, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the

peace of this State, the Government and dignity of the same.

COUNT XIV

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between December 14, 1970, and November 20, 1972, on 251 occasions, distributed, dispensed and sold to the said ROOSEVELT BURTON certain controlled dangerous substances to wit Demerol, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT XV

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. VACCARO on and between November 7, 1970, and November 24, 1972, on 141 different occasions, distributed, dispensed or sold to the said BETTY NORFLETT certain controlled dangerous substances to wit Demerol and Percadan, said distributing, dispensing and selling not being in good faith or in the course of his professional practice, contrary to the provisions of N.J.S. 24:21-19 against the peace of this State, the Government and dignity of the same.

COUNT XVI

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between March 18, 1970, and December 1, 1972, failed to keep records and maintain inventories in conformance with the record keeping and inventory requirements of Federal law, as required in N.J.S. 24:21-13 and contrary to the provisions of N.J.S.

24:21-23 against the peace of this State, the Government and dignity of the same.

COUNT XVII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between March 18, 1970, and December 1, 1972, knowingly and intentionally refused or failed to take, keep and furnish records, order forms, invoices and information required to be kept under Title 24 of the New Jersey Statutes, contrary to the provisions of this State, the Government and dignity of the same.

COUNT XVIII

The Grand Jurors of the State of New Jersey of the County of Monmouth, upon their oaths present that DR. HENRY VACCARO on and between March 18, 1970, and January 13, 1973, knowingly and intentionally kept and maintained premises known and described as 401 Sunset Avenue, in the City of Asbury Park, resorted to by persons using controlled dangerous substances in violation of this Act, for the purpose of using such substances and said premises being used for the keeping and selling of controlled dangerous substances in violation of Title 24 of the New Jersey Statutes, contrary to the provisions of N.J.S. 24:21-21(a.6) against the peace of this State, the Government and dignity of the same.

Respectfully submitted,
GEORGE F. KUGLER, JR.
Attorney General of New Jersey
By: /s/ Robert T. Winter
ROBERT T. WINTER
Deputy Attorney General

A TRUE BILL:
Joseph V. O'Grady, Foreman

Letter Requesting Adjournment Dated May 4, 1973 to Department of Law and Public Safety from Thomas F. Shebell, Jr.

(Filed May 7, 1973)

Department of Law and Public Safety
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08625

Re: In the matter of the suspension or revocation of the license of Henry J. Vaccaro, M.D. to practice Medicine and Surgery in the State of New Jersey

Gentlemen:

Please be advised that we request that the hearing now scheduled for Wednesday, May 30, 1973 at the Holiday Inn concerning the suspension or revocation of the license of Dr. Henry J. Vaccaro to practice medicine and surgery in the State of New Jersey be adjourned until a date subsequent to the trial of the criminal matters now pending against Dr. Vaccaro.

In order to have a full and fair hearing on any proposed suspension or revocation of the doctor's license, it would be necessary to hear his testimony and defense and if the doctor were to testify at this time at such a hearing, it would affect his rights in the criminal matters which are pending.

I would appreciate your advising me as soon as possible concerning this request for a continuance of the hearing so that I may know what course of action to follow in order to protect the doctor's rights.

Very truly yours,

THOMAS F. SHEBELL, JR.

TFSjr:HL
cc-Anthony F. LaBue, Esq., Deputy Attorney General, 1100 Raymond Blvd., Room 321, Newark, New Jersey 07102

Letter Denying Adjournment Request Dated May 7, 1973 to Thomas F. Shebell, Jr., Esq., from Anthony J. Balsamo, M.D.
(Filed May 9, 1973)

Dear Mr. Shebell:

Receipt is acknowledged this 7th day of May, 1973 of your letter dated May 4, 1973 in which you request the Hearing in the above captioned matter to be adjourned until a date subsequent to a trial of the criminal matters now pending against Dr. Vaccaro.

Kindly be advised that the Board of Medical Examiners, after consulting with counsel, has determined that your request be denied and the proceeding be as scheduled for Wednesday, May 30, 1973, at 9:00 A.M. at the Holiday Inn of Trenton.

You should be advised that Dr. Vaccaro is not required, and shall not be compelled, to testify at the scheduled hearing. Be further advised that failure to testify at the hearing is not a ground upon which licensing sanctions or forfeiture may or shall be imposed.

Very truly yours,

/s/ Anthony J. Balsamo, M.D.
ANTHONY J. BALSAMO, M.D./pwd
Secretary

AJB:pwd

cc: Anthony F. LaBue, Esq.
Deputy Attorney General
1100 Raymond Blvd.—Room #321
Newark, New Jersey 07102
CERTIFIED MAIL R.R.R.#183604

Order to Show Cause
(Filed May 24, 1973)

This matter being opened to the Court by Thomas F. Shebell, attorney for defendant, and upon reading of the annexed Affidavit of defendant, Henry J. Vaccaro, M.D., and it appearing from the specific facts shown from the annexed Affidavit that immediate and irreparable harm and damage will probably result to the defendant before notice can be served or informally give and a hearing had thereon, and good cause appearing for the entry of this Order;

IT IS on this 24th day of May, 1973, ORDERED that the Department of Law & Public Safety, Board of Medical Examiners, show cause before this Court on May 26, 1973 at 9:00 A.M. or as soon thereafter as the matter may be heard why an Interlocutory Injunction should not be granted pending the disposition of this action on the merits, restraining the State Board of Medical Examiners from proceeding with any further action concerning the administrative hearing until the further order of this Court and it is further,

ORDERED that in the interim and pending the further order of this Court, the Department of Law & Public Safety, State Board of Medical Examiners be and they are hereby restrained from proceeding with any further action or activities pertaining to the scheduling and holding of the administrative hearing and it is further,

ORDERED that the Department of Law & Public Safety, State Board of Medical Examiners shall have leave to move for the dissolution or modification of the restraint herein contained on two days notice; and it is further,

ORDERED that a copy of this Order and annexed Affidavit certified by the attorney for the defendant be served

upon the Department of Law & Public Safety, State Board of Medical Examiners by certified mail, return receipt requested, within five (5) days from the date hereof.

/s/ Lawrence A. Carton
LAWRENCE A. CARTON
P.J.S.C.

Affidavit of Henry J. Vaccaro, M.D.
(Filed May 24, 1973)

STATE OF NEW JERSEY :
SS
COUNTY OF MONMOUTH :

HENRY J. VACCARO, M.D., of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am the defendant in this matter and I am a licensed physician of the State of New Jersey, having offices at 401 Sunset Avenue, Asbury Park, New Jersey.

2. On or about November 27, 1972, I was served with notice from the State Board of Medical Examiners a 39 count complaint alleging that I illegally dispensed and delivered various drugs and medication to three individuals on numerous occasions.

3. My attorney, Thomas F. Shebell, Jr., notified the Board of Medical Examiners of his representation on or about November 30, 1972 and entered not guilt pleas to all counts of the complaint.

4. My attorney and I had been taking the necessary action to defend myself in this hearing when I was indicted by the Monmouth County Grand Jury, Indictment No. 799-72.

5. The indictment alleges certain violations of the law which deal with dispensing of controlled dangerous substances, in addition to a charge of manslaughter. The indictment contains 18 counts against me.

6. I have been notified that my hearing with the Board of Medical Examiners is listed for May 30, 1973. I seek to stay this proceeding until the disposition of the criminal charges against me.

7. It is my intention at this time to testify at the administrative hearing. The consequences of doing so, however, jeopardizes my right of freedom of self-incrimination, since the criminal charges are still pending. Anything which I state at the hearing may or could be used against me at a later time.

8. It must be remembered that both the administrative hearing and the indictment were the result of investigation conducted by the Office of the State Attorney General. Each is interrelated and there would be far less prejudice to the State than to me if the hearing was stayed. The Attorney General's Office will concede, I'm sure, that I and my attorney have been most cooperative with them during the pendency of these proceedings.

9. The indictment and probe of the Board have received widespread publicity through the press and radio, and I certainly feel that if the hearing is not stayed and I am found guilty on any of the charges, my right to a fair trial on the criminal charges would be seriously affected.

10. My attorneys have taken the necessary action to suppress any alleged evidence against me, and I feel that the actions of the State are arbitrary, unreasonable, illegal and in direct violation of the law.

11. If the hearing is held as now scheduled, without the Court restraining it, I will suffer immediate and irreparable harm. My rights, both personal and property, will be seriously jeopardized.

12. Deponent prays that an immediate restraining order be issued by this Honorable Court restraining the Department of Law & Public Safety, Board of Medical Examiners from proceeding with any further action concerning the scheduling of the administrative hearing and for an interlocutory injunction restraining further action by the Board

of Medical Examiners in scheduling the administrative hearing until the final disposition of this action on the merits.

/s/ Henry J. Vaccaro, M.D.
HENRY J. VACCARO, M.D.

NOTARIZED

Affidavit of Edwin H. Albano
(Filed May 25, 1973)

STATE OF NEW JERSEY)
) ss.
COUNTY OF ESSEX)

EDWIN H. ALBANO, of full age being duly sworn according to law upon his oath deposes and says:

1. I am the President of the New Jersey Board of Medical Examiners.

2. On or about November 28, 1972 an Administrative Complaint and Notice of Hearing was served on Henry J. Vaccaro, M.D.

3. The Administrative Complaint alleges that on thirty-nine (39) occasions Henry J. Vaccaro, M.D. illegally delivered and illegally dispensed controlled dangerous substances without preforming an adequate physical examination and without good medical cause or medical indication therefor and with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person.

4. The Administrative Complaint alleges that the charges, if proven, indicate a violation of the Medical Practice Act, namely N.J.S.A. 45:9-16(h). Such charges, if proven are grounds for the suspension or revocation of the license to practice medicine of Henry J. Vaccaro, M.D.

5. The charges allege that Henry J. Vaccaro illegally dispensed a total of 1,328 Biphetamine 20's, a schedule II controlled substance, to three (3) persons over a period of seven (7) months for one person, six and one-half months for another and four and one-half months for the third person.

6. The charges further allege that during that same period Henry J. Vaccaro, M.D. illegally delivered eighteen (18) prescriptions for a total of five hundred (500) pills to the same persons indicated above. The prescriptions were for schedule III controlled substances and prescription legend drugs.

7. The charges allege that Henry J. Vaccaro, M.D. charged Eight to Thirteen ($8.00-$13.00) Dollars for twenty-eight (28) Biphetamine 20's and Two to Three ($2.00-$3.00) Dollars for each prescription. Hence, the charges indicate that he received a total of Four Hundred Thirty-five ($435.00) Dollars for engaging in the alleged conduct.

8. The charges, if proven, are of a grave nature and demonstrate a total disregard of a licensed physician's responsibility to his patient's and the public generally.

9. The charges, if proven, demonstrate a callous pattern inimical to the health and welfare of those persons to whom he freely sold drugs and to the impact those persons could have on the general public.

10. The charges, if proven, constitute a reckless endangerment of the life and health of the persons to whom the controlled substances and prescription items were given and to the public generally and constitute a callous disregard by the licensee of his right to practice medicine.

11. If Henry J. Vaccaro, M.D. has engaged in the conduct set forth in the Administrative Complaint, the Board of Medical Examiners has no effective means of controlling such conduct without implementing the procedure of an administrative hearing.

12. The nature of the allegations are sufficiently serious so as to make it imperative that the Board of Medical

Examiners hear and decide the charges at the earliest opportunity.

The foregoing is true to the best of my knowledge, recollection and belief.

/s/ Edwin H. Albano
EDWIN H. ALBANO
President
New Jersey Board of Medical
Examiners

NOTARIZED

Order on Motions/Petitions
(Filed May 29, 1973)

Moving Papers Filed—May 24, 1973

Answering Papers Filed—May 25, 1973

Dated Submitted to Court—May 25, 1973

Date Argued—

Date Decided—May 25, 1973

ORDER

This matter having been duly presented to the Court, it is hereby ORDERED as follows:

Motion for Leave To Appeal and Interim Relief—Denied

SUPPLEMENTAL:

Defendant's Motion for Leave to Appeal decision of Department of Law and Public Safety, Board of Medical Examiners, dated May 7, 1973, denying request for adjournment of hearing pending trial of criminal matter in the Superior Court of New Jersey, Law Division, Monmouth County (Indictment No. 799-72), is denied.

Motion for Interlocutory Injunction pending disposition of action on the merits and restraining State Board of Medical Examiners from proceeding with further action also denied.

FOR THE COURT:

/s/ Lawrence A. Carton, Jr.
LAWRENCE A. CARTON, JR.
P.J.A.D.

Witness, the Honorable LAWRENCE A. CARTON, JR., Presiding Judge of Part E, Superior Court of New Jersey, Appellate Division, this 25th day of May 1973.

I hereby certify that the foregoing
is a true copy of the original
on file in my office.

/s/ Mortimer G. Newman, Jr.
MORTIMER G. NEWMAN, JR.
Clerk of the Superior Court

Notice of Intention to Seek Leave to Appeal Interlocutory Order
(Filed May 28, 1973)

PLEASE TAKE NOTICE that the undersigned Attorney for Defendant, Henry J. Vaccaro, M.D., will on Tuesday, May 29, 1973 at 9:00 A.M. or as soon thereafter as the matter may be heard apply for an Order granting leave to appeal to the Supreme Court of New Jersey from an Interlocutory Order of the Appellate Division entered in the above cause denying a request for adjournment and interlocutory injunction restraining the State Board of Medical Examiners from proceeding with an administrative hearing in the within cause.

THOMAS F. SHEBELL

By: /s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.
Attorney for Defendant

Order of Supreme Court of New Jersey Denying Application for Stay
(Filed May 29, 1973)

This matter having been duly presented to the Court, it is Ordered that the application for stay of administrative hearing is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 29th day of May, 1973.

/s/ Florence R. Peskoe
FLORENCE R. PESKOE
Acting Clerk

Transcript of Hearing Before
State Board of Medical Examiners of New Jersey
Holiday Inn, Trenton, N.J.
Wednesday, May 30, 1973—9:30 A.M.

(2) DR. ALBANO: The meeting will please come to order. I shall proceed with the roll call.

(At this point the roll call was taken.)

This is a formal hearing in the matter of the suspension and revocation of the license of Henry Vaccaro, M.D. to practice medicine and surgery in the State of New Jersey based on a Complaint served on Dr. Vaccaro on the 28th day of November, 1972 which alleges 39 counts of gross neglect in the practice of medicine and surgery. I also wish to bring to your attention that there have been charges filed in another Court, some of which are similar to the charges filed before this Board today. I'm therefore directing the witnesses to be called upon not to discuss this matter and I'll also direct that there be no photographs taken during this hearing. Thank you.

I shall now turn the matter over to Mr. LaBue, Deputy Attorney General.

MR. LaBUE: Thank you, Doctor.

Initially, I'd like to indicate for the record that in light of the charges that have been filed in a Court concerning conduct (3) similar to what will be before the Board today, I have offered to the respondent and his attorney the option, if they care to exercise it, to make a motion to have this hearing held in camera before the Board and therefore closed to the public. At this time I'd like to ask whether or not that offer has been considered, and if so, what the result is.

MR. SHEBELL: Yes.

For the record, I'd like to indicate that the charges, insofar as I understand them, the criminal actions are identical to the charges here insofar as the fact that we're dealing with and this Board knows, or at least the Chairman of the Board and the Attorney General knows, that because of that we have asked that the administrative hearing not proceed until such time as the criminal charges are disposed of. In my letter of May 4th I stated the reasons for that and I think they're rather obvious that certainly neither the doctor or his office personnel are in a position to offer a defense here by way of testimony under oath without incriminating themselves. The doctor is represented by Ray Brown with (4) respect to the criminal charges and I have been instructed not to offer the doctor's testimony under oath because of the fact that he would place himself in jeopardy, incriminate himself with respect to the criminal charges that are pending.

I therefore ask that the hearing not take place until such time as the criminal charges are disposed of. I think it certainly is a situation where when the testimony of the investigators for the State is offered, it's in the nature of proof, and when it cannot be contradicted by live testimony from the doctor or his office personnel, certainly we're in a situation where the doctor has not had an opportunity to properly defend the matter and I think fundamentally justice requires if there's to be a full hearing that he have the opportunity to answer the charges. We have discussed our remedies insofar as seeking interlocutories and they will, of course, not interfere with the Board's decision in that regard, but, I would ask the Board as the first item of business to consider the predicament we're in insofar as the doctor is concerned in (5) not being able to offer a defense where the doctor can apprise the Board of what the

circumstances are and what his practice is like and any situations the Board should consider with defense of these charges. I would ask the Board to give us a decision on that before we proceed to a point of whether or not to make an election as to a closed hearing or open or what. I think there's prejudice to the doctor insofar as the decision from the doctor if there would be a suspension it would have an effect on the criminal charges pending against him because there would be testimony or publicity insofar as the decision of this Board I think it would have bearing on the criminal charges and put us at a disadvantage where we can probably not get a fair trial on the criminal charges. With respect to an election of whether it's going to be open or closed or what, certainly if it were just a hearing without the criminal charges we would like an open and full hearing with the public not excluded. There are different considerations, of course, as I think the Attorney General and all of you recognize, if we're to have an open hearing (6) with the press and others, and then have to face the criminal charges after such a hearing, because we don't know—we have no control over what will make the papers. I would ask again that you gentlemen consider our request for a continuation of the actual hearing and I would ask you to consider whatever restraints you think might be necessary insofar as the doctor's practice is concerned, but I would ask you, considering those things, to give us a continuation of this hearing with whatever restrictions you think are necessary insofar as the doctor's practice is concerned.

MR. LaBUE: Might I respond to that?

DR. ALBANO: Yes.

MR. LaBUE: On May 24th the attorney for the respondent in this matter notified my office that he was applying to the Appellate Division for interlocutory relief

and for a motion to stay this proceeding. Briefs were filed in opposition to that motion on May 25th, which was Friday last. The Appellate Division refused to stay the matter and denied the motion for leave to appeal. Subsequently, I was notified on May 27th, which was Monday, that (7) an application was being made to the Supreme Court. Papers were filed yesterday. I was notified at approximately 1:55 P.M. yesterday afternoon that the Supreme Court of the State had denied the application for interlocutory relief. It is therefore my position that this Board has the authority to proceed if it deems it would be appropriate in this instance. I don't think there's any question as to its legal authority. Therefore, in light of that position, I would ask that the Board deny the application for continuance short of the doctor voluntarily suspending his license to practice medicine and surgery until such time as the criminal matter has been disposed of, and of course, such suspension would be without prejudice.

MR. SHEBELL: I have not questioned the authority of this Board to go ahead with the proceeding. What I have said is, of course, under all of the circumstances, and it would be fundamentally unfair to go ahead with the proceedings knowing that the doctor is prevented from testifying because of the criminal charges pending. I have asked the Board, understanding (8) you have the authority, to consider the position that the defense is in in this case and to consider that in light of your duty to the public. I would ask that you consider it in private caucus and see if there's not a solution which is practical and will meet everybody's need in the situation. Certainly, I think there's a public need insofar as the services of the doctor is concerned. I think that certainly without a full hearing this Board is in a position to understand and appreciate the position the defense is in. I would ask you to consider it.

DR. ALBANO: The Board will recess for a few minutes. We'll meet in the next room.

(At this point a short recess was taken.)

DR. ALBANO: Mr. Shebell, the members of the Board have unanimously agreed that should Dr. Vaccaro surrender his license, the Board will postpone this hearing until such time as all the criminal charges have been considered by the Court. That's a matter for Dr. Vaccaro to decide.

MR. SHEBELL: May I have a few minutes to discuss it with the doctor?

(9) DR. ALBANO: Surely.

(At this time a short recess was taken.)

MR. SHEBELL: The doctor and I have considered and it's the doctor's decision, which I must agree with and endorse, that the doctor will not voluntarily give up his right to practice even on the basis where it's without prejudice and there are certainly reasons for it. I don't think I need cite them, but, his duties to his practice and patients I think prevent it, and further, I think it very well might be interpreted in the public's mind or the Court—it might jeopardize his position with respect to the criminal charges. We cannot voluntarily agree to have him give up his license.

DR. ALBANO: You agree to proceed?

MR. SHEBELL: I have placed on the record and made known I think fairly well our position that we cannot have a fair hearing without being able to present our defense and we're prevented from offering the doctor's testimony where there are criminal charges pending against him. I reserve all rights I have that it's constitutionally unconstitutional (10) and violative of the doctor's fundamental rights to proceed with the hearing.

DR. ALBANO: The hearing shall now proceed.

MR. LaBUE: Initially, Doctor, before we begin I'd like to note for the record and make a motion to amend the Complaint in certain instances.

MR. SHEBELL: Before we do that, we have not yet disposed of the position or question which was asked of the option offered and whether it will be an in camera or open hearing. If we might approach that first. I feel that I have an obligation insofar as the criminal charges are concerned in order to prevent any publicity as to the charges and specific nature of the charges and testimony which will be elicited here and the effect it will have on the criminal case. I feel it's my obligation that the Board have a hearing in camera on the actual testimony concerning these charges rather than a public hearing where the testimony can then be disclosed in advance to the public for whatever weight it might have, and we would certainly have no control and either would the (11) Attorney General as to what is printed concerning the charges. I think it's bad enough with a private hearing and what action may be taken that there will be publicity which would prejudice the doctor's right in the Court case. I think that it should be a hearing without publicity and without the public and without the press and it would certainly just add to the wrong I believe is being done here insofar as the holding of the hearing. I would ask the Board to hold an in camera hearing on it due to all the circumstances.

MR. LaBUE: Doctor, you can, of course, rule on that motion and I have no objection to Counsel's request for an in camera hearing.

DR. ALBANO: Your request is granted. We'll hold an in camera hearing.

MR. SHEBELL: I think I couldn't take the position here on that I had done everything to protect the doctor if I let it go by and say to have a public hearing.

DR. ALBANO: So shall it be.

MR. LaBUE: Let the record indicate at the request of the attorney for Dr. Vaccaro the Board has granted an in camera hearing and (12) therefore excluding the public.

DR. ALBANO: I'll have to excuse all the people here today.

(At this point the room was cleared of the public.)

IN CAMERA

DR. ALBANO: Mr. Shebell, is it also your wish that the witnesses be out of the room also?

MR. SHEBELL: Yes, we were just discussing that.

DR. ALBANO: The witnesses will leave the room.

(At this point all the witnesses left the room.)

MR. LaBUE: Doctor, may we proceed?

DR. ALBANO: Proceed, please.

MR. LaBUE: At this time I'd like to offer a motion, to amend the Complaint. Specifically with respect to Count Five, I want to include after the term "amphetamine," "a prescription for thirty (30) Tuinals, 3 grain."

(13) On Count Six, again, after the word "amphetamine," "a prescription for thirty (30) Tuinal, 3 grain."

On Count Seven, after the word "amphetamine," "a prescription for thirty (30) Tuinal, 3 grain."

Count Eight, after the word "amphetamine," "prescription for thirty (30) Tuinal, 3 grain."

On Count Nine, after the word "amphetamine"—

MR. SHEBELL: Just a minute, please. I want to check that on the record.

MR. LaBUE: "A prescription for thirty (30) Tuinal, 3 grain."

Count Ten, after the word "amphetamine," "prescription for thirty (30) Parest 400."

Count Twelve, after the term "Biphetamine 12½'s," "a prescription for thirty (30) Tuinal, 3 grain."

Count Thirteen, after the term "amphetamine," "a prescription for thirty (30) Tuinal, 3 grain."

Count Fourteen, after the word "amphetamine," "a prescription for twenty (20) Tuinal, 3 grain."

(14) Count Fifteen, after the term "amphetamine," "prescription for thirty (30) Tuinal, 3 grain." I move to include the following as paragraph three on Count Fifteen: "3. On or about November 15, 1972 Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's and twenty-eight (28) Biphetamine 12½ and a prescription for thirty (30) Tuinal, 3 grain, to one Richard DeMaeo, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefore, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person."

On Count Twenty-Eight, I'd like to amend Count Twenty-Eight to include paragraph three. "3. On or about November 9, 1972, and on or about November 21, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed fifty-six (56) Biphetamine 20's on each occasion

to one Linda Hamlett, which name is fictitious, without performing an adequate physical examination of the person, without (15) good medical cause or medical indication therefore, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person."

Count Thirty-Nine, I move to amend to include paragraph three. "3. On or about November 15, 1972, Henry Vaccaro, M.D. illegally delivered and illegally dispensed twenty-eight (28) Biphetamine 20's, twenty-eight (28) Biphetamine 12½, and a prescription for thirty (30) Parest 400 to one David Williams, which name is fictitious, without performing an adequate physical examination of the person, without good medical cause or medical indication therefore, with apparent lack of regard for the significant abuse potential of the drug, and with gross disregard for the life, health, safety and welfare of said person."

Doctor, I make that motion.

MR. SHEBELL: Is there a formal part of these; do you have them typed up at all?

MR. LaBUE: I'll do that, sir, if I may have the opportunity to cause that to be done. I don't have it presently.

(16) MR. SHEBELL: I see.

DR. ALBANO: The amendment is relevant to the charges filed before this Board and your motion is granted.

MR. LaBUE: Then, if I may open.

Doctor, Mr. Shebell, members of the Board: I propose to prove in conjunction with N.J.S.A. 45:9-16(h) that the counts set forth in the Complaint will be proven by the testimony of the witnesses and are such that Dr. Vaccaro has been guilty of gross malpractice or gross neglect in the

practice of medicine which has endangered the life or health of persons. I'll introduce the three witnesses that have acted as patients and purchased drugs on numerous occasions. I'll offer for evidence the drugs that were purchased and further testimony to indicate that the charges have been substantiated.

I have nothing further.

DR. ALBANO: Mr. Shebell.

MR. SHEBELL: I don't care to make any opening statement. I think I made my position clear to the Board insofar as our difficulty with the defense and our inability to offer testimony with respect to the specific charges (17) because of the fact that we cannot offer the doctor's testimony or testimony of his office personnel. That's our position. I'll offer testimony from persons in the community familiar with the doctor, both layman and medical, insofar as the work which Dr. Vaccaro has done and is doing and the need for him to continue practice.

DR. ALBANO: Mr. LaBue, you may call your first witness.

MR. LaBUE: I call Linda Rutz.

LINDA PATTI, Sworn.

DIRECT EXAMINATION BY MR. LaBUE:

Q For the record, when was your name changed?

A March 17th.

Q What was the occasion of that change?

A My marriage.

Q Prior to that date what was your legal name?

A Rutz, R-u-t-z.

Q Linda, by whom are you employed?

A The Enforcement Bureau.

Q Keep your voice up so everyone can hear you. How long have you been so employed?

A A year and a half.

Q And what are your duties with respect to the (18) Enforcement Bureau?

A I'm assigned to cases by my supervisor.

MR. SHEBELL: I can't hear back here. I'll move up.

(At this point the Reporter read back the previous question and answer.)

Q Linda, on April 3rd of 1972 were you assigned to a specific investigation?

A Yes, I was.

Q Would you indicate to the Board, please, what that investigation was?

A I was assigned to go to Dr. Vaccaro's office.

Q Did you do that?

A Yes, I did.

Q Would you please tell the Board what occurred when you went to Dr. Vaccaro's office pursuant to your instructions?

A I went to Dr. Vaccaro's office accompanied by another investigator. When we arrived we gave our names to the receptionist. She told us to sit down and wait for the doctor. We waited there for about three hours. We were called back in and our temperature was taken, our weight was taken by a black female, and we were told to go back outside until one of the examining rooms were empty. A few minutes passed and I was called back into the examina-

tion (19) room. I waited for the doctor to come in. He came in and asked one of his nurses to bring in a blood pressure cup. He took my blood pressure. After he was finished I asked him for a prescription for Obedrins. He asked what I wanted it for. I told him I worked for the telephone company from 11 o'clock to 7 o'clock in the morning and I needed them to keep awake. He told me he would give them to me for my weight. He wrote the prescription out and I paid $8.

Q What name did you use?

A Linda Hamlett.

Q Where did you receive instructions to use that name?

A From my supervisor.

Q Linda, I show you a prescription. Can you identify this prescription as the prescription that you have indicated you received?

A Yes.

Q How can you identify it?

A It has my initials on the back and the date.

Q When were the initials put there?

A The same day.

MR. LaBUE: I offer this as Exhibit 1 in Evidence.

Let the record indicate that prior to this meeting being called to order, I indicated (20) to Counsel for the respondent that Mr. McManus of the Enforcement Bureau is the supervisor of some of the witnesses that will testify today and has personal physical custody of the evidence. He opened it in the presence of counsel and that's the reason why the evidence is set forth on the table.

Mr. Shebell, do you have any objection to that?

MR. SHEBELL: I have no objection.

I would like to state that what we did in the interest of time was to agree that there would be no need for bringing someone in to testify to any tests done on the items, this is without prejudice of course, but it's in the interest of saving time.

(Prescription dated 4/3/72 received and marked Exhibit S-1 in Evidence.)

CONTINUED EXAMINATION BY MR. LaBUE:

Q Please indicate for the Board the extent of the physical examination that you received on that date?

A Just my blood pressure.

Q Did you have occasion on April 17th to again visit Dr. Vaccaro's office pursuant to instructions?

A Yes.

(21) Q Could you indicate for the Board what took place on that date?

A The same procedure. I gave my name to the receptionist and was told to wait in the waiting room. I did so. I was called back in again. Temperature, weight was taken by the receptionist and I was told to go into one of the examining rooms. I did. I waited for the doctor. He came in and looked at my file and he began to holler and told me he couldn't write another prescription and that I still should have some of the Obedrins from the last time I was there. He said I must be abusing them. He told me they were a one-a-day pill. I told the doctor I would take the prescription to another drug store. He said it didn't matter and why didn't I let him give me something from his office. I said, "All right." He asked the black female to go out and get him a bag of amphetamines. He

asked for identification and I gave him my driver's license. She made a photostatic copy of it. He handed me the license back.

Q Was any physical examination conducted?

A No.

Q I show you what has been marked as 4988. Can you identify this as the bag you have indicated that contains the Biphetamine 20's?

A Yes, it has my name and the date.

MR. LaBUE: I offer this as Exhibit (22) S-2.

MR. SHEBELL: No objection.

(Twenty-eight black Biphetamine 20's capsules received and marked Exhibit S-2 in Evidence,)

Q What did that bag contain, do you know?

A Twenty-eight black Biphetamine capsules.

Q Linda, I show you what purports to be a photocopy of a driver's license in the name of Linda Hamlett. Can you identify this?

A Yes, that's the license that was issued to me from my office.

Q And is this photocopy the photocopy you indicated was taken when he asked you for some identification and placed in your file?

A Yes.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: Linda, on what occasion was this?

THE WITNESS: The second time, on April 17th, 1972.

MR. SHEBELL: Okay.

MR. LaBUE: I offer this as Exhibit 3.

(Photocopy of driver's license of Linda Hamlett received and marked Exhibit S-3 in (23) Evidence.)

Q Linda, on May 2nd did you have an occasion to visit the doctor's office again?

A Yes.

Q Would you indicate to the Board what took place on that occasion?

A The same procedure. When I got to the doctor's office I gave my name to the receptionist and she told me to sit in the waiting room. My name was called and I walked back into the little room he has in his office there. She opened my file and told me I had just been there a few weeks ago and I should have another week's supply left. I said I didn't. She told me she had to ask the doctor first. She left the room and went into the examination room. Then, Dr. Vaccaro came out and he got me on the side and told me, "I thought I told you to stretch them out." I said, "I didn't." He said, "Okay, give them to her." I paid $8 and got a bag.

Q Where does the term bag originate? Is that the term used in the office as a bag of amphetamines?

MR. SHEBELL: I object to leading her. She hasn't volunteered any such information and obviously hasn't said that.

DR. ALBANO: The objection is sustained.

Q Linda, I show you a bag marked 4995 and ask if (24) you can identify that?

A Yes.

Q How can you identify that?

A It has my name and the date I received it on.

Q Do you know what it contains?

A Twenty-eight black Biphetamine capsules.

MR. LaBUE: I offer this as Exhibit 4.

MR. SHEBELL: No objection.

(Twenty-eight black Biphetamine 20's capsules (4995) received and marked Exhibit S-4 in Evidence.)

Q Linda, on May 18th, 1972 did you have another occasion to visit the doctor's office?

A Yes.

Q Would you please tell the Board what occurred on that date?

A The procedure was the same. When I got to the office I gave my name to the girl, but this time she told me to come back at 5 o'clock. I left the office and at 5 o'clock I returned. She told me—before I left, I asked her why the procedure changed and she said that all the doctor had to do was see my face and she could give me the pills. When I came back at 5 o'clock she called me in right away and walked to the examination room where the doctor was. She asked him if I could have the pills. He said, "Is it Linda?" She said, (25) "Yes." She handed me the pills and I paid her the $8 and left.

MR. SHEBELL: I object to all that unless she was there and heard the conversation.

Q Linda, did you hear anything of that?

A Yes.

MR. LaBUE: Let the record indicate she has stated she heard the conversation.

Q Was any physical examination given?

A No.

Q I show you an envelope marked 5013 and ask if you can identify it?

A Yes.

Q How can you identify it?

A It has my name and the date it was given to me underneath.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No.

THE WITNESS: Excuse me, I made a mistake.

Q Linda, you have indicated that you feel that you might have made an error in your testimony?

A Yes.

Q Would you like to advise the Board what the error was?

(26) A What I just told you hapened the next time, not May 18th.

Q Going back to May 18th, 1972 would you please indicate to the Board what occurred?

A The same thing. She told me to come back at 5 o'clock. Then when I came back at 5 o'clock, she told me to come in and she told me to wait. She went into the examination room where the doctor was examining a patient and told him I wanted my prescription and I heard him say, "All right."

Q Did you hear her tell the doctor that you wanted your prescription or that you wanted your Biphetamines?

A No, that I wanted my prescription.

Q What did the term prescription mean?

A My pills. She knew that was what I was getting.

Q Did you hear the doctor say "All right?"

A Yes, I did.

MR. LaBUE: I offer that what you have already examined as Exhibit 5.

MR. SHEBELL: That's May 18th, okay.

(Twenty-eight black Biphetamine 20's capsules (5013) received and marked Exhibit S-5 in Evidence).

Q Linda, on June 6th, 1972 did you have occasion to visit the office of Dr. Vaccaro?

A Yes.

(27) Q Please tell the Board what occurred?

A When I arrived Irene Walder was sitting at the front desk and she wrote my name in the register. She told me to come back and weighed me. While she was doing that, the doctor came in the back entrance of the building. I walked back out into the waiting room. She called me back in and I heard her ask the doctor if I could have my pills. The doctor asked, "Is it Linda?" She said, "Yes, it's her." He said, "All right."

Q Did you hear the conversation take place?

A Yes.

Q I show you what is marked 5021 and ask if you can identify it?

A Yes, it has my initials and date I received it.

Q What does it contain?

A Twenty-eight Biphetamine capsules.

Q Given to you on that date?

A Yes.

MR. LaBUE: I offer this as Exhibit 6.

(Twenty-eight black Biphetamine 20's capsules (5021) received and marked Exhibit S-6 in Evidence.)

Q Linda, was any physical examination given?

A No.

Q Did you have occasion to visit the office of (28) Dr. Vaccaro on July 11th?

A Yes.

Q Would you please tell the Board what occurred?

A When I got there it was pretty empty and I walked right up to the receptionist desk where Irene was sitting. I gave her my name and asked if I had to wait to see the doctor. She said no, she could give them to me because she knew me. She opened the file and gave me a bag of Biphetamines. I paid $8 and left.

Q Was any physical examination conducted?

A No.

Q Linda, I show you what is marked 5207 and ask if you can identify it?

A Yes.

Q How can you identify it?

A It has my initials and the date I received it.

Q Do you know what it contains?

A Twenty-eight black Biphetamine capsules.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No.

MR. LaBUE: I offer this as Exhibit 7.

(Twenty-eight black Biphetamine 20's capsules (5207) received and marked Exhibit 5-7 in Evidence.)

Q Linda, on July 26th, 1972 did you have occasion (29) to visit the doctor's office?

A Yes.

Q What occurred?

A The same thing. When I walked into the office, I walked directly to the receptionist desk where Irene Walder was sitting. I gave her my name and walked back to the little room. She weighed me and gave me a bag of Biphetamine 20's. I paid $8 and left.

Q Was there any question asked of you as to whether or not you were having problems with the pills?

A No.

Q Any physical examination?

A No.

Q Were there any questions asked at all?

A No.

Q I show you what is marked as 5219 and ask if you can identify it?

A Yes, it has my initials and the date I received it.

Q Do you know what it contains?

A Twenty-eight black Biphetamine capsules.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No objection.

MR. LaBUE: I offer this as Exhibit 8.

(Twenty-eight black Biphetamine 20's capsules (5219) received and marked Exhibit S-8 (30) in Evidence.)

Q Linda, on August 9th, 1972 did you have occasion to visit the office of Dr. Vaccaro?

A Yes.

Q Tell the Board what occurred?

A When I got there Irene Walder was sitting at the receptionist desk. I walked up and gave my name. She got my file. She weighed me and got a bag of Biphetamines and handed them to me. I paid $8 and left.

Q Was any physical examination conducted?

A No.

Q Any questions asked whatsoever?

A No.

Q Linda, I show you what is marked as 5230 and ask if you can identify it?

A Yes, it has my initials and the date I received it.

Q Do you know what it contains?

A Twenty-eight black Biphetamine capsules.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No objection.

(Twenty-eight black Biphetamine 20's capsules (5230) received and marked Exhibit S-9 in Evidence.)

Q Linda, on August 24th, 1972 did you have occasion to visit Dr. Vaccaro's office?

(31) A Yes.

Q Would you tell the Board what occurred?

A It was pretty crowded that day and I walked to the receptionist desk and gave my name to Irene. There was a crowd of people standing around the desk. One of the girls that was sitting in the waiting room got up and sort of staggered into the ladies' room. There was a couple standing behind me and I heard the girl say to the boy that was standing there—

MR. SHEBELL: (Interrupting) I object to what one said to the other in the doctor's office. It's hearsay.

MR. LaBUE: Actually she's indicating a conversation that she overheard in the waiting room which is descriptive of the condition of the people.

Q Linda, if you could confine your testimony to your observation of the people.

MR. SHEBELL: I don't see how that's relevant to the charges we have here. You're talking about the condition of a person in the doctor's waiting room. The doctor wasn't there and has no knowledge of it. I object to it. She's not a doctor and she doesn't know what caused the condition.

(32) DR. ALBANO: Did you hear her out?

MR. SHEBELL: Did I hear her out?

DR. ALBANO: She started to say she heard a conversation.

MR. SHEBELL: I'm submitting that any conversation she heard in the doctor's office without the doctor being present is hearsay and not admissable.

MR. LaBUE: I may maintain that it may not be admissible for the truth of what was stated, but it could be

relevant with respect to the charges before this Board concerning the practice of the physician.

When Mr. Shebell objected to the conversation that was overheard, I then asked the witness whether she could describe the people she saw there and I think that's relevant.

MR. SHEBELL: I don't see how the people that she saw there is relevant to the charges against the doctor. Certainly there's no notice that any such thing is to be brought before this Board to put us on notice that we should bring people here present in the doctor's office day after day. I don't see where we have any notice of any such situation where anything (33) about the condition of people in the doctor's waiting room is relevant. There's certainly no offer of testimony to show any of these people were prescribed any medication other than being ill and certainly any statement made by the people when the doctor was not there cannot be admitted.

DR. ALBANO: Your objection is denied.

Continue, Mr. LaBue.

CONTINUED EXAMINATION BY MR. LaBUE:

Q Go ahead, Linda.

A I was standing there and the girl in the waiting room got up and like I said, she staggered and wavered back and forth into the ladies' room. Do you want me to say about the conversation?

Q The Board has decided you can continue.

MR. SHEBELL: Do we have the name of the girl?

THE WITNESS: No, I don't know her name.

MR. SHEBELL: I see.

A A couple was standing behind me and after the girl had entered the ladies' room, the girl said to the guy that was behind me, "That girl is really strung out. The girl who just staggered into the ladies' room is really strung out."

MR. SHEBELL: May I now have my motion (34) to strike that granted on the basis that someone behind her who has no connection with her whatsoever says, "She's really strung out," is certainly making a statement based upon no medical facts, perhaps no facts whatsoever. It's prejudicial and I ask it be stricken from the record.

DR. ALBANO: I'll sustain that part of the objection.

CONTINUED EXAMINATION BY MR. LaBUE:

Q Linda, could you testify with respect to your observations concerning the people in the waiting room, and I'd like you to qualify that by indicating, if you can for the record, the basis for your observations in terms of your experiences?

A The conversations?

Q Not the conversations, the observation of the people in the waiting room?

A Yes, I could testify to the observations.

Q Would you please do that for the record.

MR. SHEBELL: I have the same objection. We were never given notice about the condition of patients going to be relevant here. We have no notice of it whatsoever.

DR. ALBANO: The objection is denied.

(35) You may continue.

A On occasions in Dr. Vaccaro's office I have seen—

DR. ALBANO: Everything is based on your past experience?

THE WITNESS: Yes.

A In my past experiences visiting Dr. Vaccaro's office on numerous times, I have seen people sitting there—the slang is "Knotting out" which is under the influence of drugs.

Q Now, would you continue with respect to what occurred to you that day in the doctor's office concerning whether or not you received any medication?

A Irene called me in and weighed me and went to the file to get the Biphetamines out. I sked her for two bags and she said "Yes." She gave me the two bags and I paid her $16 and I left.

Q Now, when you say you paid her $16, was the price conditioned upon the amount that you received?

A Yes, $8 for one bag.

Q And how much for two bags?

A $16.

Q In other words, a multiple of eight?

A Yes.

Q Was there any physical examination conducted?

A No.

(36) Q Any questions asked?

A No.

Q I show you what is marked as 5244 and 5245 and ask if you can identify them?

A They both have my initials and the date I received them.

Q Do you know what each bag contains?

A Each contains twenty-eight black Biphetamine capsules.

MR. LaBUE: Any objection, Mr. Shebell?

MR. SHEBELL: No objection.

MR. LaBUE: Would you please mark 5244 as Exhibit S-10 and 5245 as Exhibit S-11?

(Twenty-eight black Biphetamine 20's capsules (5244) received and marked Exhibit S-10 in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (5245) received and marked Exhibit S-11 in Evidence.)

Q Did you have occasion to return to Dr. Vaccaro's office on September 13th?

A Yes.

Q Please indicate for the record what occurred?

A When I arrived at the doctor's office, I walked into his office and a white female whose name is known to me as Sunny. I asked her if Irene was there and she told me she was in the back. I walked around the desk and into a little (37) room. I found Irene. She got my file out and weighed me, and again, I asked her if I could have two bags. She said, "Yes." She gave them to me and I paid $16 and left.

Q Was any physical examination conducted?

A No.

Q Were any questions asked?

Q No.

Q When you say she got your file out, did you physically see your file?

A Yes.

Q Have you seen your file on prior occasions?

A Yes.

Q Have you ever had occasion to to look closely at your your file?

A Yes.

Q Could you identify your file if it were shown to you?

A Yes.

MR. LaBUE: Mr. Shebell, I'll put that in at the end of the testimony.

MR. SHEBELL: I have no objection.

Q I show you what purports to be a manila folder bearing the caption "Hamlett, Linda, 74 Bay Avenue, Highland, New Jersey." Is that the address and the name you gave at the doctor's office?

(38) A Yes.

Q It contains a card that says "Statement," and two cards that appear to be three by five with various writings on them.

MR. SHEBELL: May I see them.

MR. LaBUE: Surely.

Q Linda, do you recognize this file and the cards as the file you have referred to?

A Yes.

MR. LaBUE: I offer that file containing the three cards that I have indicated as S-12.

MR. SHEBELL: No objection.

(File containing three cards is received and marked Exhibit S-12 in Evidence.)

Q Linda, did you have occasion on September 13th to visit the doctor's office?

A Yes.

Q What occurred?

MR. SHEBELL: She just testified to the 13th.

MR. LaBUE: Forgive me.

Q You have indicated that you purchased two bags, is that correct?

A Yes.

Q I show you what is marked as 5260 and 5261 and (39) ask if you can identify them?

A Yes, they both have my initials and the date that I received them.

Q Do you know what they contain?

A Yes, they each contain twenty-eight black Biphetamine capsules.

DR. ALBANO: The gentleman who just came in is Dr. Bookbinder. He's a member of the Board.

MR. SHEBELL: I would have no objection to the doctor sitting as long as he has available to him the transcript of the motions, the remarks and the testimony to this point.

MR. LaBUE: If the doctor participates in the decision, they would be made available to him.

DR. ALBANO: Fine.

MR. SHEBELL: All right.

MR. LaBUE: I offer what's been identified as a bag of twenty-eight Biphetamine 20's marked 5260 as Exhibit S-13

and a bag that's been marked 5261 containing twenty-eight Biphetamine 20's as Exhibit S-14.

(Twenty-eight black Biphetamine 20's capsules (5260) received and marked Exhibit S-13 (40) in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (5261) received and marked Exhibit S-14 in Evidence.)

Q Linda, on September 28th, 1972 did you have occasion to visit the doctor's office?

A Yes.

Q What occurred?

A The same thing. I walked into his office and walked up to the receptionist desk where Irene Walder was sitting. She got my file out and she wanted to weigh me, but this day she asked me if I wanted two bags. I said "Yes." She gave me two bags and I paid $16 and left.

Q Were there any questions asked?

A No.

Q Any physical examination?

A No.

Q I show you two envelopes marked 5269 and 5270 and ask if you can identify them?

A Both of them have my initials and the date and the time.

Q What do they contain?

A Twenty-eight black Biphetamine capsules each.

MR. LaBUE: Would you please mark these.

(Twenty-eight black Biphetamine 20's (41) capsules (5269), received and marked Exhibit S-15 in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (5270) received and marked Exhibit S-16 in Evidence.)

Q Now, Linda, you have referred to Irene Walder. Would you please tell the Board who she is?

A She works in Dr. Vaccaro's office.

Q Do you know what position she occupies?

A Receptionist—nurse.

Q How was she dressed?

A White uniform, stockings and shoes.

Q And the times you have been there, when the doctor was present, did she conduct herself at his direction?

A Yes.

Q Now, on October 13th, 1972 did you have occasion to visit the doctor's office?

A Yes.

Q What occurred?

A When I got there I walked directly to the receptionist's desk where Irene Walder was sitting. She got my file out and told me she wanted to weigh me. She weighed me and gave me two envelopes containing Biphetamine 20's. I paid $16 and left.

Q How much did each envelope contain?

(42) A Twenty-eight capsules.

Q I show you what is marked 5289 and 5290 and ask if you can identify them?

A Yes, both have my initials, the date and the time I received them.

Q What do they each contain?

A Twenty-eight black Biphetamine capsules.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No objection.

MR. LaBUE: Would you please mark these.

(Twenty-eight black Biphetamine 20's capsules (5289) received and marked Exhibit S-17 in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (5290) received and marked Exhibit S-18 in Evidence.)

Q Linda, did you have occasion on October 26th, 1972 to visit the doctor's office?

A Yes.

Q What occurred?

A When I arrived I walked to the receptionist desk where Irene Walder was sitting. She got my file out and told me to come back because she wanted to weigh me. She got the pills out, the brown file, and told me to go into one of the examining rooms. I asked her how come and said that she had (43) always given me the pills right there. She told me she's been taking care of me but that it had to be quiet and that's why she took me to the examination room.

Q And did you receive any medication?

A Yes, two bags of Biphetamine 20's.

Q What did they each contain?

A Twenty-eight Biphetamines.

Q How much did you pay?

A $16.

Q Was a physical examination conducted?

A No.

Q Any questions asked?

A No.

Q I show you what has been marked 5062 and 5063 and ask if you can identify them?

A Yes, they both have my initials and the date and the time I received them.

Q Do you know what they contain?

A They each contain twenty-eight Biphetamine capsules.

MR. LaBUE: Any objection, Mr. Shebell?

MR. SHEBELL: No.

(Twenty-eight black Biphetamine 20's capsules (5062) received and marked Exhibit S-19 in Evidence.)

(Twenty-eight black Biphetamine 20's (44) capsules (5063) received and marked Exhibit S-20 in Evidence.)

Q Did you have occasion to visit the doctor's office on September 9th, 1972—I'm sorry, November 9th, 1972?

A Yes, I did.

Q What occurred?

A When I arrived at the doctor's office on this day, a black female was sitting behind the desk. I asked if her name was Barbara, and she said it was. She asked me how I knew her name was Barbara. I said "I didn't know, but Irene told me to ask for Barbara if she wasn't there." Barbara said, "Okay." I said I wanted my pills. She said I would have to come back at 4:30 when the doctor was in. She said she couldn't give them to me because things were getting too bad and she couldn't give them out anymore. I told her Irene had always given them to me. I asked

her where she was and she said she was at home sick. I asked her to call her on the phone and tell her I was there. Barbara called Irene and Irene told her it was okay for me to have my pills. Barbara gave me two bags. I paid her $16. She told me not to say anything in front of Sunny, the other woman that works there.

Q What did each bag contain?

A Twenty-eight Biphetamines.

(45) Q Was a physical examination conducted?

A No.

Q Were any questions asked at all concerning your mental or physical well-being?

A No.

Q I show you what has been marked 5083 and 5084 and ask if you can identify them?

A They both have the date and my initials and also the time I received them.

Q Do you know what each contains?

A Each contains twenty-eight black Biphetamine capsules.

MR. LaBUE: Mr. Shebell, any objection?

MR. SHEBELL: No objection.

MR. LaBUE: I offer the envelope 5083 containing twenty-eight Biphetamines as S-21, and the envelope marked 5084 as S-22.

(Twenty-eight black Biphetamine 20's capsules (5083) received and marked Exhibit S-21 in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (5084) received and marked Exhibit S-22 in Evidence.)

Q Linda, on November 21st, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes.

(46) Q What occurred on that date?

A I walked directly to the receptionist desk and Irene was there. Irene got my file out and weighed me. She wrote my name this time in a different kind of book. It said "Drug entry." It was a yellow loose-leaf binder book. She told me I had to give her $20 this time. I gave $20 and left.

Q What did you receive?

A Twenty-eight Biphetamine 20's in each envelope.

Q Was any physical examination conducted?

A No.

Q Was any question asked about your physical or mental well-being?

A No.

Q I show you what has been marked 4522 and 4523 and ask if you can identify them and tell us what they contain?

A Both have my initials and the date and time I received them.

Q What do they contain?

A Twenty-eight Biphetamines in each.

MR. SHEBELL: I note that although the notation indicates a price of $20 on each one, the total is $20, is that correct?

THE WITNESS: Yes.

MR. LaBUE: I offer what has been (47) identified as a bag containing twenty-eight Biphetamines marked 4522 as S-23 and a bag containing twenty-eight Biphetamines which has been marked 4523 as S-24.

(Twenty-eight black Biphetamine 20's capsules (4522) received and marked Exhibit S-23 in Evidence.)

(Twenty-eight black Biphetamine 20's capsules (4523) received and marked Exhibit S-24 in Evidence.)

(At this point a short recess was taken.)

CONTINUED EXAMINATION BY MR. LaBUE:

Q Linda, you of course testified at length that pursuant to directions you visited Dr. Vaccaro's office?

A Yes.

Q Is he present here today?

A Yes.

Q Is the gentleman the respondent in this matter?

A Yes.

Q Is he the gentleman you saw at the office on the occasions you did see him?

A Yes.

MR. LaBUE: Mr. Shebell and I have gone over some of the police lab reports pertaining to this evidence. Mr. Shebell has indicated (48) that he will stipulate—correct me if I'm wrong—that the evidence is what it purports to be in terms of it being Biphetamines.

MR. SHEBELL: I have not seen any of the lab reports. What I indicated was, and I asked you whether in fact do the reports show what we said they were at the

time they were prescribed and given and you answered affirmatively. I said we have no reason to insist on any proof that they're what you said they were.

MR. LaBUE: If that's the case and there's no objection to making the record complete, I would like to offer the State Police report into Evidence as being demonstrative of what the evidence that's been introduced to date and the evidence we intend to introduce is in fact what it purports to be with respect to it being Biphetamine 20's.

MR. SHEBELL: Can we have them put aside and at the next recess we can have them marked in order and there will be no problem.

MR. LaBUE: As to that extent, I have no further questions of Linda.

CROSS-EXAMINATION BY MR. SHEBELL:

(49) Q Mrs. Patti, on the many occasions when you testified that you received two packages of the Biphetamines which would be fify-six Biphetamines from Irene Wilder—

A Walder.

Q Her name is Wilder.

The doctor was not there or it was not done in the presence of the doctor, is that correct?

A Yes.

Q As a matter of fact, you were cautioned apparently by Irene and Barbara to keep it quiet and not let Sunny—who you knew to be the doctor's sister—

A Not then, but now I know.

Q You were cautioned not to let her find out or know about it?

A Yes.

Q On occasion you were taken into a private room by the nurse Irene so it wouldn't be observed or seen?

A One time, yes.

Q With respect to the chart that has been introduced in Evidence here, you indicate you were familiar with it, is that correct?

A Yes.

Q And your record and chart includes also the charge card or the amount charged to you when you were there in the office by Irene?

(50) A Yes.

Q And on the other occasions by Barbara?

A Yes.

Q Did you observe, in fact, when the girl would take the $16 from you and give you two bags that that notation was made as to one as to the charge and what was given?

A I didn't know it then.

Q You know it now?

A Yes.

Q When did you find that out?

A November 28th.

Q And did you bring this to Dr. Vaccaro's attention that the girl was giving you a double dose without his knowledge?

A No.

Q Did you ever bring it to his attention that there was a notation being made that one dose was given and one charge?

MR. LaBUE: She's indicated she was unaware of that.

Q And you said you learned it in November, is that correct?

A Yes.

Q Now, when you originally went to the doctor's office, you say you indicated to him that you wanted a certain (51) drug, is that correct?

A Yes.

Q And you named that by name?

A Obedrin.

Q And the doctor told you that he could not give it to you for the purpose of staying awake but would prescribe something for the condition of being overweight, trying to lose weight?

A Yes.

Q And your blood pressure was taken on that occasion as well as your weight and temperature?

A Yes.

Q Now, on any of the occasions when you came to the doctor's office, had you been under the influence of any drug at all?

A No.

Q And you were perfectly healthy when you went there?

A Yes.

Q When the doctor took your blood pressure did he also take your pulse?

A Yes.

Q And when you say there was no further examination the doctor observed you and looked at you, didn't he?

A You mean look at my face?

(52) Q Yes.

A Yes, just like I'm looking at you.

Q How close was the doctor to you?

A As close as Dr. Albano.

Q Or even closer when he was observing you?

A No, when he was taking my blood pressure, he was looking at the thing and not at me.

Q Just stared at the blood pressure and not your face or eyes?

A No, he stared at the dial that goes up and goes down.

Q What did he stare at when he took your pulse?

A His watch.

Q Now, you mentioned that there were patients in the office who you considered to be under the influence of drugs?

A Yes.

Q And do you know any of their names, any of the people?

A No.

Q And with respect to the conclusion you made as to their being under the influence of drugs, do you know what drug they were under the influence of?

A No.

Q Do you know where they got the drugs from?

A No.

(53) Q Do you know why they were in the doctor's office?

A No.

Q Insofar as to the number of people present in the doctor's office from time to time, how many people would you see in the doctor's waiting room at one time?

A Fifty.

Q And you could tell from your observations that many of those people were ill and sick and in need of medical care, couldn't you?

A No, I'm not a doctor.

Q You're not a doctor, no, but you could tell someone under the influence of drugs?

A Yes.

Q You could tell not being a doctor they were under the influence of drugs as opposed as to having some interior balance that might make them unstable?

A They were under the influence of drugs.

Q Did you do anything in the way of any examination of those people at all?

A No.

Q Any tests of those people?

A No.

Q How close were you to the people?

A Sitting next to them or standing next to them.

(54) Q Anybody under the influence of alcohol?

A I couldn't smell it.

Q Did you see anybody ever in the doctor's office under the influence of alcohol?

A I don't know. If they were under the influence of alcohol, you could usually smell it if you're sitting right next to them.

Q If you drink Vodka, how about that?

A You can't smell Vodka.

Q Now, you mentioned that there was some occasions when you feel you were able to hear a conversation between the doctor and his nurse when he was in the examination room?

A Yes.

Q Where were you at the time?

A Where they weigh you—the office is situated—the scale and the drug bin are right where the examination rooms are.

Q In other words, it's like an anteroom or waiting room where the scale is and there are rooms off of that, a number of examination rooms off it?

A Yes.

Q Each one of those has doors which are usually kept closed when there's a patient inside?

A No, sometimes they're kept open.

Q Sometimes kept open?

(55) A Yes.

Q Is a PA system with music in the office which is on all the time?

A Yes.

Q As I understand it, on each of those occasions when you received the double dose as you mentioned, the two bags of amphetamines, the doctor was not present on any of those occasions?

A Right.

Q And with respect to Irene, had you built up a friendship with her of some sort over a period of time?

A No. just to say hello.

Q Just to say hello?

A Yes, and "How are you?" She would say, "Hi, Linda, how are you?"

Q And whose idea was it in the beginning that she was going to take care of you, was it hers, that she would give you the two bags?

A I don't know.

Q Did you request her to give you two bags on the first occasion when she did it?

A Yes, I did.

Q Did you give her any reason why you wanted two bags?

A No.

(56) Q Isn't it a fact on the 17th of April when you returned to Dr. Vaccaro's office, you told him you lost the prescription of Obedrin when he asked you why you were back and he asked what happened to it?

A No.

Q You didn't tell him that?

A No.

Q You have reviewed his record of your treatment, the report, and on April 17th, 1972 it has a notation "lost Obedrin." Did you tell him that?

A Is that what that says. I never told him that.

Q But you say the doctor admonished you and reprimanded you for being back, when in fact he had given you a prescription which was sufficient to last you beyond the time you were there, is that correct?

A Yes.

Q And on no occasion when you went to the doctor's office were you ever under the influence of any drug or any ill health, is that correct?

A Never.

Q And you went to the doctor's office for the specific purpose of obtaining drugs from the office, is that correct?

A That's right.

MR. SHEBELL: I have nothing further.

(57) MR. LaBUE: I have a few more questions.

REDIRECT EXAMINATION BY MR. LaBUE:

Q Linda, when you received the bags of twenty-eight Biphetamines, where did the bags come from, if you know?

A A big brown drug bin, an electric drug bin.

Q Could you describe it for the Board, if you can?

A It's about from the beginning of the table to maybe about here (Indicating). It has two open doors on the top and you push a button and it revolves. When you lift your hand off, it stops when you want it to stop.

Q What does it contain?

A All little bags.

Q All little bags. In other words, it contains sealed envelopes, is that correct?

Q Could you roughly approximate the number that you saw in that bin that you have described?

A No.

many?

Q Well, would it be fair to say that there were very

MR. SHEBELL: I object to your leading her. She's your witness.

A I could never tell how big the revolver was. I saw it going around and around.

(58) Q You have indicated that the doctor observed you on occasion when he saw you. If you can recall, how long were you actually in his presence?

A The first time—five minutes.

Q And the subsequent visits?

A The second time he came in the room long enough to ask for identification, for the girl to make the photostatic copy, to bring it back and get the pills—another five mintes.

Q The subsequent visits?

A On May 2nd, he only came out in the hall and talked to me for a minute and walked back into the examination room.

Q So then, is it your testimony that the times you saw the doctor subsequent to your first and second visits, it got progressively less?

A Yes.

Q There's been some questions asked with respect to the PA music. Was it background music?

A Yes.

Q Was it so loud that a normal conversation couldn't be heard?

A No, because if it wasn't everybody would be screaming.

MR. LaBUE: I have nothing further.

MR. SHEBELL: Nothing further.

DR. ALBANO: All right, Linda, you're (59) excused. Thank you.

MR. LaBUE: At this time I'd like to call David Moore.

DAVID MOORE, Sworn.

DIRECT EXAMINATION BY MR. LaBUE:

Q Mr. Moore, by whom were you employed in June of 1972?

A For the State of New Jersey, Enforcement Section, Division of Consumer Affairs.

Q And during the course of that employment were you directed to go to Dr. Vaccaro's office?

A I was.

Q Were you directed to use a specific name?

A Yes.

Q What name did you use?

A David Williams.

Q What address?

A 622 Springfield Avenue, Newark, New Jersey.

Q Did you have identification identifying you as David Williams?

A I did.

Q Now, on June 5th, 1972 you have indicated you (60) were directed to go to Dr. Vaccaro's office. Could you tell the Board, please, what occurred when you went to Dr. Vaccaro's office on that date?

MR. SHEBELL: You have indicated the 5th, did you mean the 15th?

MR. LaBUE: I'm sorry, I mean the 15th.

A On June 15th, approximately 2 o'clock P.M., I entered Dr. Vaccaro's office. I walked directly to the receptionist desk where I gave my name as David Williams, 622 Springfield Avenue, Newark, New Jersey. The receptionist put my name on a register and told me to have a seat in the waiting room. I did so.

Q Now, if you can, could you recall or paraphrase what occurred when you went there on that date in terms of seeing the doctor, examination, if any, and what was prescribed or dispensed?

A I don't understand.

Q Did you go to the doctor's office on that date?

A Yes.

Q Did you receive any medication?

A Yes.

Q What did you receive?

A I received a white envelope that contained twenty-eight Biphetamine 20's.

Q I show you what has been marked 5025 and ask if (61) you can identify this?

A Yes, those are the Biphetamine 20's that was issued to me by Dr. Vaccaro.

Q How can you identify that?

A My writing on the back. When I took the bag to where we go, I opened it up and counted them with the inspector, William McManus, and I initialed the back of the bag.

Q Do you know what this contains?

A Yes, these are the Biphetamine 20's—unless they have been reopened again.

Q How many are in there?

A There should be twenty-eight.

Q Did the doctor conduct a physical examination of you prior to dispensing these Biphetamines?

MR. SHEBELL: I object to whether the doctor conducted a physical examination.

MR. LaBUE: Fine.

Q Would you please indicate to the Board, what, if anything, took place between you and the doctor prior to your receiving this packet of pills?

A Yes, he checked my heart with the stethoscope and gave me a blood pressure test.

Q Were any questions asked?

A He asked what was I doing in Asbury Park from Newark and I told him I was a musician and I was in a rock group (62) and it kept me high and kept me going and kept me awake. He said, "Well, with all that noise you should stay awake anyway." Nothing else was said.

Q So then, was that the extent of your contact with the doctor?

A At that time, yes.

Q Did you pay the doctor for these pills?

A No, I paid the nurse.

Q How much did you pay the nurse?

A I paid the nurse $8 for the drug, but I was short the first time.

Q How much did you actually pay her?

A $13.

Q Is that on that visit?

A On the first visit I paid her $8.

Q Now, was there any question asked of you with respect to identification?

A I don't understand.

Q Were you asked for a driver's license or social security card?

A Yes, I provided a license that Investigator William McManus gave me stating I was David Williams, 622 Springfield Avenue, Newark, New Jersey. The nurse took the license—Barbara had a photostatic copy made and handed it back to me.

MR. LaBUE: Mr. Shebell, any objection?

(63) MR. SHEBELL: No.

MR. LaBUE: I offer the envelope that's been marked 5025 and identified as containing twenty-eight Biphetamines as S-25.

(Twenty-eight black Biphetamine 20's capsules (5025) received and marked Exhibit S-25 in Evidence.)

MR. SHEBELL: May I just suggest from this point on, in the interest of saving time, I suggest that we just line them up down the table and we can all at once mark them. Otherwise, each time the girl has to stop and we have to pass them down.

MR. LaBUE: If you care to look at them all, we're going to offer them for David Moore.

CONTINUED EXAMINATION BY MR. LaBUE:

Q Mr. Moore, I show you what appears to be a photostat of a driver's license and ask you if you can identify that?

A Yes, this was a license issued to me by Investigator William McManus.

Q When was it taken, if you know?

A No, I wouldn't know, but the only photostat that was taken was when the nurse Barbara took it.

MR. LaBue: I removed that from the (64) file and later I'd like this marked as S-26.

Q On June 26th, did you have occasion to visit the doctor's office?

A Yes, sir, I did.

Q What occurred on that date?

A At approximately 3 P.M. I returned to the doctor's office.

Q Let me interrupt you.

Did you receive any pills on that date?

A Yes, sir, I did.

Q How much did you receive?

A I received twenty-eight Biphetamine 20's.

Q Was an examination conducted?

A No, sir, it wasn't.

Q Were any questions asked as to your physical or mental well-being?

A No, sir.

Q Can you identify this as the envelope given you on that date?

A Yes, sir, I can.

MR. LaBUE: Let the record indicate that he identified the envelope marked 5036.

Q How much did you pay the doctor on that occasion, Mr. Moore?

A $13—$5 I owed him from before.

(65) MR. SHEBELL: Was it paid to the doctor or the nurse?

THE WITNESS: No, to the nurse.

Q Now, on July 6th did you have occasion to visit the office of the doctor?

A Yes, sir.

Q Did you receive any medication on that date?

A Yes, sir, twenty-eight black capsules known to be Biphetamine 20's.

Q Did you receive a physical examination?

A No, sir, I didn't.

Q Did anyone ask any questions as to your physical or mental well-being?

A No, sir.

MR. SHEBELL: Could we have him indicate who gave him those?

MR. LaBUE: Of course.

Q On July 6th, do you recall who gave you the medication?

A No, sir, I can't.

Q Would you review your report to refresh your recollection on July 6th?

A Yes.

Q Is your recollection refreshed as to who handed you the pills then?

(66) A Dr. Vaccaro.

Q Was there any charge for those pills?

A Yes, it was $8 for a packet.

Q Was any examination conducted?

A No, sir.

Q I show you what has been marked as 5046 and ask if you can identify this?

A Yes, sir.

Q Is this the envelope that you received from the doctor on July 6th, 1972.

A Yes, sir, it is.

Q Can you identify it by your initials on the back?

A Yes, sir.

Q You have indicated you paid $8?

A Yes.

Q You further indicated there was no physical examination, is that correct?

A No, sir.

Q No, sir—does that mean there was no physical examination?

A No, sir, there was no examination.

Q On July 21st did you have occasion to visit the doctor's office?

A Yes, sir.

(67) Q Can you indicate what, if anything, occured on that date?

A Well, the nurse Barbara Dickerson gave us a hassle by saying she wouldn't let us see the doctor and to return on a later date.

Q Did you see the doctor on that occasion?

A No, sir, I didn't.

Q On July 27th did you return to Dr. Vaccaro's office?

A Yes.

Q What occurred on that date?

A Well, I went there and I returned with another investigator, Rick.

Q What happened with respect to you?

A With respect to me?

Q Did you receive any medication on that date?

A Yes, sir.

Q Do you recall what that medication was?

A Twenty-eight black capsules of Biphetamine 20's.

Q Were you also given a prescription on that date?

A Yes, for Parest 400.

Q Did the doctor conduct any examination at all?

A No, sir, he didn't.

Q Were any questions asked with respect to your physical or mental well-being?

(68) A No.

Q How much was charged to you on that date?

A $13.

Q Do you know why the charge was $13?

A Yes. It's $8 for the packet of amphetamine 20's and then, there's $5 charge for the prescription.

Q I show you what has been marked as 5220 and ask if you can identify that as the twenty-eight Biphetamine 20's?

A Yes, sir, it is.

MR. LaBUE: Let the record indicate he's identified it as the envelope he received on July 27th.

Q David, I show you what purports to be a prescription for thirty (30) Parest 400. Can you identify that prescription as the prescription given to you on July 27th by Dr. Vaccaro?

A Yes, sir, it is.

Q Did you have occasion, Mr. Moore, to visit the doctor's office on August 3rd, 1972?

A Yes, sir.

Q Did you receive any medication on that date?

A Yes, I had twenty-eight black capsules containing Biphetamine 20's and a prescription for Parest.

Q Was any physical examination conducted?

(69) A No, sir.

Q Were any questions asked with respect to your physical or mental well-being?

A No, sir.

Q How much did you pay on that date, sir?

A $13.

Q Now, I show you what is marked as 5227 and ask if you can identify this as the envelope you received on August 3rd, 1972?

A Yes, sir, it is.

Q What does it contain?

A Twenty-eight Biphetamine 20's.

Q I show you what purports to be a prescription dated 8/23/72 and ask if you can identify that?

A Yes, it's the prescription that was given to me.

Q Who was it given to you by?

A Dr. Vaccaro.

Q On August 3rd, 1972?

A Yes.

Q On August 10th, 1972 did you go to Dr. Vaccaro's office?

A Yes, sir.

Q What occurred on that date?

A Well, Barbara said—the nurse Barbara said that we would not be able to see the doctor. She said that she would (70) not be able to give us Biphetamines because the last time Irene was there and she marked down we were there before the previous time and we would have to wait for at least two or three weeks to go back again.

Q On August 14th, 1972 did you again have occasion to go to the doctor's office?

A Yes, sir, I did.

Q What occurred on that date?

A Again, the nurse Barbara Dickerson flatly refused and told us that Sunny told the doctor that we were coming in every week and Barbara then told us to wait another week before coming back.

Q On August 21st, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes, sir, I did.

Q What occurred on that date?

A I saw the doctor and he asked me was I in a group and I replied "Yes." He said, "Okay, take these at 10 A.M. —" which he handed me a package of black and white capsules containing Biphetamines 12½'s and he told me to go and take another package at 12 o'clock noon and he handed me another package of twenty-eight capsules that were Biphetamine 20's. He gave me a prescription for Parest 400.

Q Did you pay him any money?

A I think so.

(71) Q Do you recall how much it was?

A I think it was $20.

Q I show you what purports or what has been marked as 5236 and ask if you can identify that?

A Yes, these are the Biphetamine 20's.

Q I show you what has been marked as 5237 and ask if you can identify this?

A Yes, these are the Biphetamine 12½'s.

MR. SHEBELL: Can you repeat that?

THE WITNESS: Those are the Biphetamine 12½'s.

Q I show you what purports to be a prescription dated August 21st, 1972 and ask if you can identify that?

A Yes, this was a prescription for Parest given to me by Dr. Vaccaro.

Q On August 30th, did you have occasion to visit the office of Dr. Vaccaro?

A Yes, sir.

Q Did you get to see the doctor?

A No, sir.

Q What occurred?

A Barbara Dickerson flatly refused me from going in to see the doctor.

MR. SHEBELL: May I have the date again.

MR. LaBUE; It was August 30th.

(72) Q On September 5th, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes, sir, I did.

Q Did you see the doctor on that date?

A Yes, sir, I did.

Q What did you receive?

A Two packages of Biphetamines and one prescription for twenty (20) Parest 400.

Q Was any physical examination conducted?

A No, sir, there wasn't.

Q Was any question asked concerning your physical and mental well-being?

A No, sir.

Q How long were you in the doctor's presence on that date, if you recall?

A About five minutes.

Q Fine.

I show you, sir, an envelope marked 5249 and ask if you can identify it?

A Yes, there are the Biphetamine 12½ issued to me by Dr. Vaccaro.

Q I show you an envelope marked 5250 and ask if you can identify that?

A This is a package of 12½'s issued to me by Dr. Vaccaro.

Q These 12½'s are 20's?

(73) A 20's, right.

Q I show you a prescription dated 9/3/72 and ask if you can indicate whether you have seen that before and what it is?

A Yes, this is a prescription for twenty (20) Parest 400.

Q And whose signature appears thereon, if you know?

A Dr. Vaccaro.

Q Who handed that to you?

A Dr. Vaccaro.

Q Was there any charge for this, if you remember?

A Yes, sir, there was.

Q Do you recall what it was?

A $18.

Q On October 4th, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes, sir, I did.

Q Do you recall what you received on that date?

A Yes, a prescription for thirty (30) Parest 400 and he told the nurse to give me two packages of Biphetamine 20's instead of 12½.

Q I show you what is marked as 5276 and ask if you can identify that?

A Yes, these are the Biphetamine 20's issued to me by the nurse Barbara Dickerson.

(74) Q Do you know what the envelope contains?

A Twenty-eight Biphetamine 20's.

Q I show you what has been marked as 5277 and ask if you can identify that?

A Yes, this is the other package of Biphetamine 20's.

Q I show you a prescription dated 10/4/72 and ask if you can identify that?

A Yes, this is the prescription for the Parest 400 that was issued to me by Dr. Vaccaro.

Q Was any physical examination conducted?

A No, sir, there wasn't.

Q Were any questions asked concerning your physical and mental well-being?

A No, sir.

Q Did you ask the doctor for more drugs than you received, and if so, how did he respond, if you recall?

A Well—yes. He just laughed and said, "What the hell for? You're going to be back in two weeks anyway."

Q Is that what you recall the conversation to be that day?

A Yes.

Q Do you recall what you paid the doctor for this visit?

A $18.

Q Who did you make the payment to?

(75) A I made the payment to the nurse Barbara Dickerson.

Q Now, on October 18th, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes, sir.

Q What did you receive on that date?

A I received two packages of Biphetamines 20's and a prescription for Parest 400.

Q I show you what is marked as 5051 and ask if you can identify that, sir?

A This is the package of Biphetamine 20's given to me by the nurse on that date.

Q There's another marked 5300 and I ask if you can identify that?

A This is another package of Biphetamine 20's handed to me by the nurse.

Q When you say handed to you by the nurse, at whose direction were they handed to you?

A Dr. Vaccaro.

Q Did you hear him say "Give this young man," or "Give Dave these envelopes"?

A Yes, sir.

Q I show you what purports to be a prescription dated 10/18/72 and ask if you can identify that?

A Yes, sir, this is the prescription given to me by Dr. Vaccaro for thirty (30) Parest 400.

(76) Q Did the doctor physically hand that to you?

A Yes, sir, he did.

Q Mr. Moore, was any physical examination conducted on that date?

A No, sir, there wasn't.

Q Were any questions asked at all about your use of these drugs?

A No, sir.

Q Now, on October 25th, 1972 did you have occasion to visit the office of Dr. Vaccaro?

A Yes, sir, I did.

Q Did you receive any medication from him on that date?

A Yes, sir. I couldn't get the Biphetamines because the doctor—he said that he could not give them to me be-

cause the law was after him as a result of a lady named Millie who had an overdose and they were going to be watching him for awhile.

Q Did the doctor say that to you?

A Yes.

Q Why did he say that to you; did you ask him for the pills?

A Yes, sir, I did.

Q In response to that question did that conversation take place?

(77) A Yes, sir.

Q Did you receive any medication from the doctor on that date?

A I asked for a prescription for Parest 400.

Q Did you receive that?

A Yes.

Q I show you what purports to be a prescription dated 10/25/72 and ask if you can identify that, sir?

A Yes, sir, this is the prescription for the Parest 400 and the amount is twenty (20).

Q And you say that is the amount given to you on that date?

A Yes, sir.

Q If you know, sir, why would he give you a prescription instead of giving you the medication you asked for?

A Because he said this was a little harder to keep track of than the pills.

Q Did he charge you at all for that visit?

A Yes, sir.

Q What did he charge you?

A $2.

Q On November 2nd, 1972 did you have occasion to visit the office of Dr. Vaccaro again?

A November what?

(78) Q November 2nd, 1972.

A Yes, sir, I did.

Q And did you receive any medication on that date?

A Yes, sir.

Q What did you receive?

A I received one package of Biphetamine 20's and a prescription for Parest 400.

Q Did anyone conduct any physical examination at all?

A No, sir, they did not.

Q Were any questions asked of you at all?

A Yes, he told me to make sure I go to the Plaza Pharmacy to have my prescription filled.

Q Did he tell you why?

A No, sir, he did not.

Q I show you an envelope that's marked 5076 and ask if you can identify that as the envelope you received on that date?

A Yes, sir, these are the biphetamine 20's issued to me by Dr. Vaccaro.

Q I show you a prescription that's dated 11/2/72 and ask if you can identify that?

A This is the prescription for the twenty (20) Parest 400.

Q Now, Mr. Moore, was there any examination at all between you and the doctor as to the frequency of your (79) visits?

A No, sir.

Q Did he indicate anything to you about why you were there so frequently or anything of that nature?

A No, sir.

Q Are you indicating in essence then that you just go to his office, pay your money, and receive the pills?

MR. SHEBELL: I object. It's leading and I don't think it's warranted by the testimony that we have had to this point. He testified what took place on each occasion.

MR. LaBUE: All right.

MR. SHEBELL: As a matter of fact, he testified that he wasn't allowed to see the doctor on several occasions because of the fact that he had been going there too frequently.

MR. LaBUE: All right.

Q On November 15th, 1972 did you have occasion to visit Dr. Vaccaro's office?

A Yes, sir.

Q What did you receive?

A One package of Biphetamine 20's and a prescription for Parest 400, and also one package of Biphetamine 12½'s.

Q How much did that cost you?

A $22.

(80) Q Was any physical examination conducted at all?

A No, sir.

Q Tell the Board how you would go to the doctor's office and receive medication of this nature?

A Well—

Q On this date, if you can recall?

A On this date—on the average or just one specified date?

Q If you can't recall specifically, generally what occurs where you would make three purchases such as this from a doctor without a physical; how do you do that?

MR. SHEBELL: I object to generally. Take a specific date. He's testified to specific dates. There's a record of specific dates.

MR. LaBUE: All right.

Q At this time I show you an envelope marked 5091 and ask if you can identify that?

A This is the package of Biphetamine 12½ handed to me by the doctor and it contains twenty-eight black and white capsules.

Q I show you an envelope marked 5092 and ask if you can identify that, sir?

A Yes, these are the black capsules, the Biphetamine 20's.

MR. SHEBELL: Is that the November date (81) we're talking about?

MR. LaBUE: Yes, it is.

Q I show you a prescription, Mr. Moore, dated 11/18/72, made out to David Williams, and ask if you can identify that?

A This is the prescription for thirty (30) Parest 400 handed to me by the doctor.

Q Now, Mr. Moore, I'd like you in light of the objection that was made to refresh your recollection, if you can, of your visit of November 2nd. We'll take November 2nd specifically. I'd like you to indicate to the Board how you can go in a week after you were there on October 25th and purchase the items that you received on November 2nd.

MR. SHEBELL: I object. That's contrary to his testimony. He testified on the 25th he received no Biphetamine 20's.

MR. LaBUE: Even though he didn't receive Biphetamine 20's, he in fact received a prescription for Parest. The question, sir, was in light of his receiving a prescription such as he did on October 25th—I would just like to know whatever process was involved with respect to the purchases that were made several days later.

MR. SHEBELL: I have no objection to (82) that.

Q Can you recall your conversation on November 2nd?

A Yes, sir, I can.

Q Review your report and please indicate to the Board what took place in terms of a conversation, if any, concerning that purchase?

A I went in, but I didn't go by myself that time. I went with this guy. He has two names; Jimmy-John or John-Jimmy. He went in first, and then he came out and he said, "It's okay." I went in after that. The nurse asked was it cash or charge. He told the nurse that it was charge

because he's going to bring some silver in because Dr. Vaccaro liked silver and cameras and stuff like that. When it was my turn, I went in and was talking to the doctor and he was in kind of an aggravated mood, but gave me what I asked for.

Q What did you ask for?

A I asked for two packages of Biphetamine 20's, but he gave me one.

Q Why?

A I don't know.

Q Did he say anything to you about the other package?

A No, sir, he did not.

MR. LaBUE: I have no further questions of Mr. Moore at this time.

(83) I'd like to pause to get this evidence in order before it becomes too confusing.

(At this time a recess was called, during which time Exhibits S-26 through S-50 received and marked in Evidence.)

CONTINUED DIRECT EXAMINATION
BY MR. LaBUE:

Q Mr. Moore, you have given testimony that since 6/15 to 11/15 you have received various items from the doctor. At any time, sir, during this five-month period was a physical examination conducted?

A Nothing beside the heart check and blood pressure.

Q I think you have indicated that that was conducted primarily in the beginning, is that correct?

A Yes.

Q Now, could you advise this Board, if you can, why that's particularly significant? Have you ever been examined by a physician and given a complete physical?

A Yes, sir, I have.

Q What was the result of the complete physical?

MR. SHEBELL: I'm objecting to what is the result when he's not a doctor.

Q Let me ask you this. Have you ever made an application for life insurance?

A Yes, sir, I have.

(84) Q What was the result?

MR. SHEBELL: I object. It's hearsay. If there's any such condition, the doctor who diagnosed it should have been brought in to testify. The witness has no expertise.

MR. LaBUE: Gentlemen, I submit that this patient, if in fact he can be characterized as such, is competent to testify with respect to the advice he's been given, and if necessary I'll cause a physical examination to be conducted and have the doctor brought here to testify. I'd like him to be able to make that condition known to this Board.

DR. ALBANO: So noted.

A I have high blood pressure and a bad heart. I have a heart murmur. I'm not allowed to take any medication. I never had any life insurance because I'm a high risk.

MR. LaBUE: I have no further questions at this time.

DR. ALBANO: All right, Mr. Shebell.

CROSS-EXAMINATION BY MR. SHEBELL:

Q Mr. Moore, you're actually employed by the State of New Jersey, is that correct?

A Yes, sir.

(85) Q Did you have a preemployment physical with the State of New Jersey?

A No, sir.

Q Never had any exam before going to work for the State of New Jersey in this capacity as an investigator?

A No, sir.

Q Did you in fact file an application for employment with the State when you became employed by them?

A I don't understand.

Q Did you have to fill out papers for a job with the State?

A Yes.

Q Did you note on there any condition or physical disability such as high blood pressure or a heart murmur?

A I don't remember.

Q You don't remember whether you did or not?

A No. If I did, I would have written it down because it's nothing to lie about anyway. I don't think—

Q If you did, you'd remember it, wouldn't you?

A In what way, sir?

DR. ALBANO: He said he doesn't remember.

Q Now, Mr. Moore, with respect to the occasions when you went to the doctor's office and you were given pills on occasions by Barbara Dickerson, a nurse, and also by Irene Wilder, is that correct?

(86) A Yes, one time by Irene Wilder, yes.

Q Did you become friendly with both of those girls?

A Yes, sir.

Q Did you seek to date them; ask them to date, ask to take them out?

A No, sir.

Q Did you ever offer either of them any money personally to get pills or drugs?

A I was told she had a family and anything would help.

Q Did you ever offer them any money?

A I told her I would give her $10 next week.

Q When you told her you'd give her $10 next week, you told her you would personally give it to her, is that correct?

A Yes, sir, that's correct.

Q Who did you go to the office with on that day?

A Undercover Investigator Richard Domenic.

Q Were you refused on that day any prescription for drugs?

A Yes, sir, we were.

Q And it was on that occasion that you and Rick Domenic told Barbara you would give her $10 extra for herself?

A Yes, because she said she had a family at home and anything would help out.

(87) Q When she told you she had a family at home, was that back on August 3rd of '72?

A Yes, that's correct.

Q As a matter of fact, she specifically told you on that date that she was giving you the drugs without the doctor knowing, isn't that what she said?

A She said that, but nothing—

Q She told you that she was giving you the Biphetamines without the doctor knowing it and that's why she said, "Don't forget me. I have two kids at home." Is that what she said?

A Yes, that's what she said.

Q Now, isn't it a fact that on two occasions, namely, the 26th of June, 1972 and October 18th, 1972 you told Dr. Vaccaro that the pills that he had given you were either stolen or lost out of your clothing?

A Any time he asked me what happened to the pills, I'd look at him and say, "They're gone or lost. I don't know where they are. My mother washed them in the washing machine."

Q That was a lie, that wasn't so, is that correct?

A That's correct.

Q And your purpose in doing that was so you could get pills out of the doctor at a time when he told you you should not have them because enough time had not gone by?

(88) A If you're a drug addict, you think of anything.

Q Are you a drug addict?

A No.

Q On no occasion when you came to the doctor's office was there anything that appeared wrong with you; there were no occasions when you went to Dr. Vaccaro's office that you were under the influence of any drugs, was there?

A No, sir.

Q There were no manifestations of any illess by you such as shivering, shaking, or anything of that nature?

A No, sir.

Q On June 15th, 1972 Dr. Vaccaro listened to your heart?

A Yes, sir, he did.

Q You have reviewed his record, have you?

A Pardon me?

Q You have reviewed his record, have you?

A My record, no, sir.

Q You've never seen it?

A No.

Q And did the doctor discuss with you that in his medical opinion you were suffering from narcolepsy?

A No, sir.

Q Did you see him write down the diagnosis on your card on June 15th, 1972.

(89) A No.

Q And the doctor questioned you on just the circumstances under which you could stay awake or had difficulty staying awake, and in fact, said, "Well, with the noise from a band, you still can't stay awake." He questioned you along those lines?

A Yes.

Q You told him with that you were having trouble staying awake?

A And staying high.

Q When did you tell the doctor you wanted to stay high?

A Stay high and stay awake I said.

Q Did you describe it to the doctor that you had ever been high before?

A Have I described it to the doctor?

Q Did you tell the doctor you were high before?

A No, sir.

Q Did you ever tell the doctor you used any drugs at all before?

A No, sir, I did not.

Q You never mentioned anything to the doctor about wanting to be high, did you?

A Yes, I did.

Q Isn't it a fact all you told the doctor why you (90) had to work and despite the fact there was noise and everything else you couldn't physically stay awake?

A No, sir.

Q Now, there came a time when you were given another prescription, is that correct, the Parest?

A Yes.

Q And what additional complaints did you give Dr. Vaccaro that caused you to obtain the prescription for Parest?

A Well, I went out in the field and learned that it's better—they call it "tricks." It's better to turn two tricks than one trick. You can sell the ups and keep the downs or—

Q What did you tell Dr. Vaccaro that you had in the way of additional symptoms in order to get the Parest?

A I asked him for them.

Q You went into Dr. Vaccaro and said, "Give me some Parest?"

A I asked for downs.

Q Did you tell him what the problem was that you said you needed other medication or another prescription?

A No.

Q Didn't say anything at all that anything was wrong with you?

A No.

(91) Q And what occasion was that that you went in and said you wanted downs?

A To my best recollection, August 21st.

Q August 21st?

A Yes.

Q Well, you received a prescription in July, had you not, July 27th for Parest?

A Yes, sir, that's right.

Q Now, when you saw the doctor on August 21st, 1972 he discussed with you what problems you were having, didn't he, as far as sleeping and staying awake?

A No. On August 21st I went into his office and I told him I wanted more and so when he said, "What do you mean more?" I said, "Give me two packages of Biphetamine 20's." He said he couldn't do that. He gave me a package of Biphetamine 12½ and Biphetamine 20's. He gave me times to take them. I think it was 10 and 12 o'clock.

Q When he gave you the Parest he told you to take those before you go to bed?

A Yes.

Q Wasn't that in response to your complaint that you were having trouble sleeping?

A If you take two ups, you're not going to sleep period, that's what I was taught.

Q Yes, and you complained to the doctor, didn't (92) you, you were having trouble sleeping?

A No, sir, I did not.

Q That wasn't why he gave you the Parest?

A No, I asked him for it.

Q And you said that was when, August 21st or July 27th or when?

A August 21st.

Q You had already been receiving that prescription from around the time of the beginning of your investigation?

A To my best recollection, I don't think so.

Q You didn't on July 27th, 1972 receive a prescription for Parest?

A That time I did. That was the first contact for Parest.

Q On the date of July 27th, 1972 what time did you arrive at Dr. Vaccaro's office?

A Approximately 2:30 p.m.

Q What time did you leave his office?

A About 7 o'clock or 6:30.

Q Approximately four and a half hours later?

A Yes.

Q On August 21st, 1972 what time did you arrive at Dr. Vacaro's office?

A Five o'clock p.m.

Q What time did you leave the doctor's office?

(93) A About 7:30 or 8 o'clock.

Q And you saw Dr. Vaccaro personally on August 21st, 1972?

A Yes.

Q Did he see you in an examining room?

A Yes, he did.

Q And who was in the examining room; was it just the two of you or was someone else present?

A The nurses are always walking around there.

Q How long were you in the examining room with Dr. Vaccaro?

A Five minutes or less.

Q And what took place during the minutes, insofar as you and the doctor was concerned; what did he do for you or to you?

A He asked me if I was in a group and I replied yes.

Q He meant by that a musical group?

A Yes. Then he said, "Okay, take these at 10 o'clock in the morning." He handed me an envelope containing twenty-eight black and white capsules. He told me to take the Biphetamine 20's at 12 o'clock.

Q What took place during the additional time; did he just look at you or what?

A He was writing out the prescription for Parest and doing other little things he did.

(94) Q Anything else take place?

A Yes. Barbara Dickerson gave me a Tootsie Roll lollipop, cherry.

Q Is that in your report?

A No, sir, it's not.

Q You just happened to remember it was August 21st she gave you a Tootsie Roll lollipop?

A You want me to write that in the report?

Q I want to know how you remember about a Tootsie Roll lollipop?

A Because that was the first time I ever got a real contact with the doctor where he did talk to me for a period of time.

Q During that period of time did you complain to him of any ill effects of any medications of what he had been giving you?

A No, sir.

Q Did you tell him you had any medical problem whatsoever that was bothering you as a result of what he was failing to do as a result of your condition as far as he was concerned?

A No sir.

Q Were there any outward signs of any ill effects from any drugs or any other reason as far as you could detect?

(95) A No, sir.

Q Now, you mentioned on November 2nd, 1972, Dr. Vaccaro was in an aggravated mood?

A Yes, sir. I didn't say he was in an aggravated mood.

Q You knew that from what he was saying to you about why you were there as often as you were?

A Yes, sir, he did. He asked me what I was doing back so early and I told him, "I ate those up already."

Q And that caused him to become aggravated with you?

A No, he just looked at me and told me I was getting worse and my friend Jimmy.

Q And it was in August that Sunny found out you were coming in frequently and speaking with the girls and getting drugs and told the doctor, isn't that so, that you were prohibited from coming back frequently?

A Give me a specified date, please.

Q August 14th. You were told, were you not, by Barbara and Sunny that you were coming there too frequently? As a matter of fact, Barbara told you that Sunny had learned you were coming there—this was the day after, not the day after, but the visit after you had offered Barbara the $10 apiece to give you the drugs?

A Yes, sir.

Q And the next time you came she made it known to (96) you that Sunny found out you were coming in frequently?

A Yes.

Q And she indicated that Sunny had told the doctor you were coming there about every three weeks and in-

structed everybody not to allow you to have any more without seeing the doctor, isn't that so?

A Without seeing the doctor?

Q Yes.

A No, I wasn't told that.

Q You weren't given anything on that day; you were flatly refused anything at all, is that correct?

A Yes, sir.

Q And you left the office when instructed to leave, is that correct?

A Yes.

Q Now, you had claimed that Dr. Vaccaro told you he couldn't give you the Biphetamines on a certain occasion, but that he'd give you a prescription for Parest because it was harder to check on, is that your testimony?

A Yes, sir, it was.

Q So that you're saying the doctor said that the pills which he himself dispensed from his office, not those, but the ones where he's giving you a written prescription were desirable because they couldn't be checked; is that what you're saying?

(97) A No. Well—when the nurses got the pills they were in cans and I guess if you keep using up the cans somebody would get suspicious. I really couldn't tell you.

Q It didn't make any sense to you that anyone would say they couldn't check on a prescription to a drug store in writing. It wasn't called in over the phone or anything like that, was it?

A No, sir.

Q And your very purpose in going to Dr. Vaccaro's office on these various occasions was to obtain from him, as you mentioned through any means, even if it had to be a lie, was to obtain these drugs, right?

A To show a pattern of abuse and neglect.

Q And that was your purpose?

A Yes, sir.

Q In going and making out your report?

A Yes, sir, it was.

MR. SHEBELL: I have nothing further.

MR. LaBUE: I have a few more questions.

REDIRECT EXAMINATION BY MR. LaBUE:

Q There's been quite a bit of attention paid to the August 10th visit where Barbara Dickerson asked you for money. Did you ever give her any money?

A No, sir.

(98) Q In fact, wasn't Barbara Dickerson the one that refused to let you see the doctor?

A Yes, sir.

Q Did the doctor ever refuse to let you see him; did the doctor ever turn you down cold?

A No.

Q Who kept you out of the doctor's office and away from the doctor?

A The nurses.

Q You have also indicated on occasion you told the doctor that pills were stolen or lost, in light of your knowledge and experience is that a common junkie excuse?

A Yes, from what I learned, it is.

Q Now, there's been some questions asked with respect to your condition being diagnosed as narcolepsy. Did you ever receive an electroencephalogram?

A I don't understand narcolepsy.

Q Did you ever receive an examination with a machine attached or placed about your head?

A An electrocardiogram—that's all.

Q I mean from Dr. Vaccaro?

A No.

Q Did you receive what was described to you as a neurological work-up?

A No.

(99) Q Did you receive what was described to you as a blood test?

A No.

Q Or a urinalysis?

A No.

Q Or a complete physical work-up?

A No.

Q Did the doctor ever ask you whether there was a reason why you should not receive all this medication? Did he ever ask you questions concerning any adverse effects this medication could have had on you?

A No, sir, he didn't.

MR. LaBUE: That's all I have.

MR. SHEBELL: I have a few more questions.

RECROSS-EXAMINATION BY MR. SHEBELL:

Q Mrs. Moore, you mentioned the nurses kept you away from the doctor. The doctor never refused to see you, did he?

A No.

Q The doctor never refused to hear any complaints concerning your condition or any problems that you had?

A No, sir.

MR. SHEBELL: I have nothing further.

DR. ALBANO: Do any members of the Board (100) have any questions of this witness?

Since there are no questions, you may be excused, Mr. Moore.

Mr. LaBue, call your next witness.

MR. LaBUE: I'll call Richard Domenic.

RICHARD CRAIG DOMENIC, Sworn.

DIRECT EXAMINATION BY MR. LaBUE:

Q Would you please speak up and state your full name for the record?

A Richard Craig Domenic.

Q Do you mind if I call you Rick?

A No.

Q By whom are you employed?

A Bureau of Enforcement, State of New Jersey.

Q What are your duties with respect to that employment?

A I do undercover work.

Q During the course of that assignment have you had occasion to visit the office of Dr. Vaccaro?

A Yes.

Q Did you visit Dr. Vaccaro's office on March 10th, 1972?

(101) A Yes.

Q Wait one second.

MR. LaBUE: Mr. Shebell, for the record I'd like to indicate that the evidence that was introduced was introduced as S-25 through S-50 and it pertained to Mr. Moore and his testimony.

MR. SHEBELL: All right.

Q Rick, getting back to March 10th, did you visit Dr. Vaccaro's office?

A Yes.

Q During the course of that visit did you receive any medication?

A Yes, I did.

Q Do you recall what it was?

A Yes, it was Biphetamine 20's.

Q Rick, I show you what has been marked as 4974 and ask if you can examine and identify this.

A Biphetamine 20's.

Q Can you identify it by the date on there as to whether or not it was yours when you received it?

A Yes, it was—yes, I examined it and it was mine.

Q Okay, fine.

Rick, on March 10th did you receive any physical examination at all from the doctor?

A Yes.

(102) Q What did the doctor do in the form of a physical examination?

A He examined me by taking my blood pressure and he looked into my eyes and mouth and with an instrument that appeared to be a stethoscope.

Q Was there any other physical examination?

A No, there wasn't.

Q Did you pay the doctor for the Biphetamines that you indicated you received?

A Yes, $8 for the pills and $7 for the prescription. Pardon me, it was $8 for the visit and $7.

Q This was on March 10th? Make sure we have the same date.

A Yes.

Q Now, on April 3rd, 1972 did you have occasion to visit the doctor's office again?

A Yes.

Q What occurred on that date?

A The doctor then put his finger on my wrist by apparently taking my pulse.

Q Was that the extent of the physical given?

A Yes.

Q Did you receive any medication?

A Yes, twenty-eight black capsules.

Q I show you what's been marked 4978 and ask you (103) to look at that and if you can identify it?

A Yes, it's 4798.

Q Look and see if your signature or a date is on there and if you can identify that?

A Yes.

Q Do you know what it contains, Rick?

A Yes, twenty-eight black capsules, Biphetamine 20's.

Q Okay.

Getting back to the date of April 3rd, did the doctor listen to your chest or take your blood pressure, if you know?

A When was that?

Q April 3rd.

A He put his finger on my wrist.

Q Was that the extent of the examination then?

A Yes.

Q Did you pay the doctor?

A Yes.

Q How much did you pay him?

A $8.

Q Now, on April 17th did you have occasion to visit the doctor again?

A Yes.

Q Did you receive any medication from the doctor on that date?

(104) A Yes, I did.

Q What did you receive?

A Twenty-eight black capsules.

Q I show you an envelope marked 4987 and ask you if you can identify this by your signature on there as to the envelope you received on that date?

A Yes, this is my envelope.

Q Do you know what was in there?

A Twenty-eight black capsules.

MR. SHEBELL: May I see that one?

MR. LaBUE: Yes.

May I continue, sir?

MR. SHEBELL: Go ahead.

Q Were you given any physical examination by the doctor on that date, Rick?

A Which date?

Q April 17th

A No, no examination.

Q Did you see or speak to the doctor on that date?

A Yes, I did.

Q Fine.

On May 2nd did you have occasion to go to the doctor's office?

A Yes, I did.

Q What did you receive on that date?

(105) A When was that?

Q May 2nd.

A An envelope containing twenty-eight black capsules.

Q Did you also receive a prescription, Rick?

A Yes.

Q What was the prescription for, if you remember?

A Tuinal.

Q I show you an envelope marked 4996 and I ask you if you can identify this by virtue of your signature on there as the envelope you received that date?

A Yes, it is.

Q And I also show you what purports to be a prescription dated 5/2/72 and ask if that was the prescription you received on that date?

A Yes, it was.

Q Now, who did you get the prescription from, if you remember?

A Dr. Vaccaro.

Q You got it from the doctor himself, physically himself?

A Yes.

Q Now, on May 18th, 1972 did you have occasion to go to the doctor's office?

A Yes, I did.

Q Let's go back to the 2nd of May for a moment. (106) Did you receive any physical examination at all on that date?

A On what date?

Q May 2nd.

A Yes, an envelope containing—

Q No, did you receive a physical examination on that date?

Take your time, Rick.

A No.

Q Did you receive a physical?

A No.

Q Did you pay the doctor for the pills and the prescription?

A Yes, I did.

Q Do you remember how much you paid him?

A Yes.

Q How much was it?

A $10.

Q Now, getting up to the 18th of May, did you visit the doctor's office on that date?

A May 18th?

Q Right.

A Yes, I did.

Q Did you receive any medication on that date?

A Yes.

Q What did you receive in the way of Biphetamines?

(107) A Twenty-eight black capsules.

Q Now, in addition to the twenty-eight capsules, did you ask for and receive another prescription or another bag of Biphetamines on that date?

A Yes, I received a bag of—which date was this?

Q May 18th. How many bags of Biphetamines did you receive?

A On May 18th?

Q Right.

A Two packages of Biphetamines.

Q How many in each bag?

A Twenty-eight.

Q And did you also receive a prescription on that date?

A Yes, I did.

Q And what was the prescription for, if you recall?

A Thirty (30) Tuinal.

Q Who did you receive the drugs and prescription from?

A Dr. Vaccaro.

Q Was a physical examination conducted?

A No.

Q How much did you pay for the fifty-six Biphetamine 20's and the prescription for thirty (30) Tuinal?

(108) A $18.

Q I show you what is marked 5010 and ask if you can identify that as the envelope you received on that date?

A Yes.

Q I show you now 5011 and ask if you can identify that as the envelope you received on that date?

A Yes.

Q I show you a prescription dated 5/18/72 and ask if you can identify that as the prescription you received?

A Yes.

Q May I have them back, please.

Okay, now, Rick, on June 6th, 1972, did you have occasion to visit the office of Dr. Vaccaro?

A Yes, I did.

Q What did you receive on that date?

A A prescription for thirty (30) Tuinal and twenty-eight black capsules.

Q Twenty-eight black capsules?

A Yes.

Q Did you receive a physical examination on that date, Rick?

A Yes, I did.

Q What did the physical examination consist of?

A I was weighed by the receptionist.

Q Was that the extent of the physical examation?

(109) A Yes, it was.

Q Wait a second.

I show you what is marked 5019 and ask if you can identify that as the envelope you received on that date?

A Yes.

Q Do you know what the envelope contains?

A Yes, twenty-eight black capsules.

Q Here is a prescription that is dated 6/6/72 and I ask if you can identify that?

A Yes.

Q And what was that for?

A A prescription for thirty (30) Tuinal.

Q Now, did you pay the doctor on June 6th?

A Yes, I did.

Q How much did you pay him?

A Thirty (30) Tuinal—wait a minute.

Q If you remember, tell us.

All right, if you don't remember—

A I don't remember.

Q On the 6th of June do you remember who you got the drugs from?

A Yes.

Q From who?

A Dr. Vaccaro.

Q Why was he giving you Tuinal, Rick?

(110) A Well, I told him that I wanted them to bring me down because I was up.

Q And that was your request and based on that request you were given a prescription for Tuinal?

MR. SHEBELL: I object. He said what his request was.

MR. LaBUE: Fine.

Q Did you have occasion to visit the doctor's office on June 26th, 1972?

A Yes.

Q What did you receive on June 26th? Take your time, Rick.

A What did I receive?

Q On June 26th, right?

A On June 26th—I was weighed.

Q No, no. First of all, did you receive any drugs on June 26th? Take a look and see if you received any drugs?

A Two envelopes.

Q What did they contain?

A Thirty (30) Tuinals—twenty-eight black capsules.

Q Were you given a prescription also?

A Yes.

Q What was the prescription for?

A Thirty (30) Tuinals.

Q Was any physical examination at all conducted?

(111) A No, no type of examination,

Q Do you recall how much you paid on that occasion?

A Yes, $18.

Q I show you envelopes that are marked 5031 and 5032 and ask if you can identify them as the envelopes received on that date?

A Yes, these are the ones.

Q And I show you a prescription that's dated 6/26/72 and I ask if you can identify that as the prescription received on that date?

A Yes.

Q Now, Rick, on July 6th did you have occasion to visit the office of Dr. Vaccaro again?

A July 26th?

Q No, July 6th.

A July 6th, okay.

Q Did you visit the doctor's office on July 6th?

A Yes.

Q Did you receive any drugs on that date?

A Yes.

Q What did you receive?

A Biphetamine 20's.

Q Did you receive anything else?

A Nothing else.

(112) Q Rick, think about it, please.

A Okay. Let's see.

MR. SHEBELL: I'll stipulate he got a prescription for (thirty 30) Tuinal on July 6th.

MR. LaBUE: Fine.

Q Now, who did you receive the medication and the prescription from on that date?

A I received it from Dr. Vaccaro.

Q Fine.

Was any physical examination conducted?

A No, there wasn't.

MR. LaBUE: I'd like to go off the record for a minute.

(At this point there was a discussion off the record.)

MR. LaBUE: After a discussion with Mr. Shebell I would like to indicate something for the record.

Rick Domenic, using the name Richard DeMaeo on 7/20/72 was refused any medication from Dr. Vaccaro's office; on 7/27/72 he received twenty-eight Biphetamine 20's and a prescription for thirty (30) Tuinal; on 8/3/72 he received twenty-eight Biphetamine 20's and a precription for thirty (30) Parest 400; on (113) 8/10/72 he was refused any medication; 8/14/72 he was refused any medication; 8/21/72 he received twenty-eight Biphetamine 20's; 9/7/72 he received fifty-six Biphetamine 20's and twenty-eight Biphetamine 12½'s, a prescription for thirty (30) Tunials; 9/27/72 he received twenty-eight Biphetamine 20's and a prescription for thirty (30) Tuinal; on October 11th, 1972 he received twenty-eight Biphetamine 20's and a prescription for twenty (20) Tuinal; October 26th, 1972 he received twenty-eight Biphetamine 20's and a prescription for thirty (30) Tuinal; on 11/15/72 he received twenty-eight Biphetamine 20's, twenty-eight Biphetamine 12½'s and a prescription for thirty (30) Tuinal.

MR. SHEBELL: With respect to that which you put upon the record, I have no objection to that becoming a part of the record subject to cross-examination on it and the production of the report of the investigator concerning it so I may review it at the time of cross-examination.

MR. LaBUE: Fine.

CONTINUED DIRECT EXAMINATION
BY MR. LaBUE:

Q Now, Rick, what name did you use when you went (114) to Dr. Vaccaro's office?

A I used the name of Rick DeMaeo.

Q Where did you get the name?

A From the Bureau of Enforcement.

Q Fine.

Was any identification provided for you?

A Yes.

Q Using that name?

A Yes.

Q To your knowledge was a copy of that identification made by Dr. Vaccaro's office personnel?

A Yes.

MR. LaBUE: I'll offer that into Evidence also.

MR. SHEBELL: No objection to that.

MR. LaBUE: I have no further questions at this time. I have an expert witness coming at 2 o'clock. I'd like to move until we can terminate this evidence so that when the expert comes there wouldn't be any undue delay.

MR. SHEBELL: Would there be any objection in recessing now and just holding his cross-examination and putting the expert on at 2 because I have a doctor coming also.

(115) MR. LaBUE: Fine.

Mr. Shebell, if we can excuse the witness, we can have the evidence marked. Do you have any objection?

MR. SHEBELL: None at all.

DR. ALBANO: We'll recess until 2 o'clock.

(At this time a recess was taken during which time Exhibits S-51 though S-83 were received and marked into Evidence.)

(At this point the meeting reconvened.)

DR. ALBANO: We'll reconvene now.

Are you through with the witness, Mr. LaBue?

MR. LaBUE: I have one or two more questions, if I may.

RICHARD CRAIG DOMENIC, having been previously sworn, resumes:

CONTINUED DIRECT EXAMINATION
BY MR. LaBUE:

Q Mr. Domenic, you have testified that on approximately 16 occasions you received a certain medication from Dr. Vaccaro. I'd like to ask whether or not you're aware of any diagnosis that was ever given with respect to your physical condition, and I'm talking now about something you (116) have been told by the doctor in terms of a diagnosis?

A Right.

Q Do you know what I'm talking about?

A Yes.

Q Has any information of that ever been imparted to you?

A Yes.

Q What has he told you?

A (Witness not answering.)

Q Has he ever told you there's anything wrong with you and that's the reason he was treating you?

A When?

Q Has the doctor ever said—has he ever said "This is what's wrong with you, and this is the reason I'm giving you this medication," has he ever said this to you?

A Yes.

Q What did he say was wrong with you?

A He said, you know, he said that—he didn't say anything was wrong with me. I told him I wanted pills to keep me awake.

Q The doctor never told you what was wrong with you?

A Right.

Q Was an extensive physical examination ever conducted to include things such as a blood test, meaning the (117) removal of blood?

A No.

Q A urinalysis?

A No.

Q An electroencephalogram; do you know what that is?

A No.

Q Was any machinery or wires ever connected to your head wherein a graph or screen depicted your brain waves; was that ever done?

A No, he did not.

Q Was anything ever done that was described to you as a complete neurological work-up?

A No.

MR. LaBUE: I have no further questions at this time, sir.

DR. ALBANO: All right, Mr. Shebell.

CROSS-EXAMINATION BY MR. SHEBELL:

Q Mr. DeMaeo, when you first came—actually the last name is Domenic and the name you used with the doctor was DeMaeo, is that right?

A Yes.

Q Did you use DeMarso at one time also?

A Yes—no, I did not.

(118) Q Pardon me.

A No I did not.

DR. ALBANO: Did you understand the question?

THE WITNESS: No, I didn't.

DR. ALBANO: Will you repeat the question?

Q You testified that you had gone to Dr. Vaccaro's office on April 17th of 1972, is that correct?

A Yes, I did.

Q You have examined your record, have you, with respect to the treatment that Dr. Vaccaro gave you and the charges that were made for it?

A Pardon me?

DR. ALBANO: The date is April 17th.

MR. LaBUE: The question was has he examined his records, and I think he means the patients' records.

MR. SHEBELL: Yes.

Q Pertaining to your file and the treatment?

A Pardon me?

MR. LaBUE: Did you ever see your patient's file, not that record, a patient file?

DR. ALBANO: The doctor's record card; did you ever see that?

(119) THE WITNESS: Yes, I did.

MR. SHEBELL: There does not appear to be any notation of your presence in the office on the date of April 17th, 1972, does there?

MR. LaBUE: If I can clarify it. He's asking about the patient's file. Now, you don't have that before you. The question was have you seen that patient file in the office?

THE WITNESS: Have I seen the patient file in the office?

MR. LaBUE: Right. I think obviously the answer is no.

DR. ORNAF: Usually the physician has a file on you and every time he comes in, he has a card or file and marks the date, your complaint and the medication he gives you. That stays in the doctor's office and that's your patient file. That's the doctor's possession; that's not your possession. Of course, it's taken out when you come to the doctor's. Have you seen that file?

Isn't that the question, Mr. Shebell?

MR. SHEBELL: Yes.

DR. ALBANO: Have you seen the doctor's record card; the visits you made to his office; (120) have you seen the card at all?

THE WITNESS: No.

Q Never at any time have you inspected the records of Dr. Vaccaro; is that what you're telling us?

A Yes.

Q Did you on the 17th of April when you went to Dr. Vaccaro's office, use the name DeMarso rather than DeMaeo?

A No.

Q Did you look at the medication you received on that date to see whether or not it had DeMarso on there rather than DeMaeo?

A No.

Q What did you do with it; you turned it over to your superior?

A Yes.

Q And now, on the occasions when you went to Dr. Vaccaro's office—let's take the first occasion. You mentioned that the doctor checked your eyes, is that correct?

A (Witness not answering.)

MR. LaBUE: Say yes or no.

A Say it again.

Q The doctor examined your eyes when you were there; looked into your eyes, right?

A Yes, he did.

Q And he also looked into your throat?

(121) A No, he didn't.

Q He didn't do that on the first occasion when you went there?

A No, he didn't.

DR. ALBANO: Can you refer to your record to see whether he did or did not.

MR. LaBUE: It's not in the record.

MR. SHEBELL: I object to the attorney's general statement of whether it's in there or not. He's already testified that the doctor had examined his throat, as I recall it.

MR. LaBUE: It's his mouth, if I may, sir.

Q What did he look at when he examined you; did he look at your mouth, teeth or your throat?

A Did he look at my what—my throat?

Q Did he look at your throat?

A Yes.

Q And he used an instrument to look into your eyes and throat, didn't he?

A Yes, he did.

Q Did he then use a separate instrument to check your chest and heart?

A (Witness not answering.)

MR. LaBUE: Look at your report.

(122) A Which date was this?

DR. ALBANO: March 10th, 1972.

A March 10th, 1972—

MR. LaBUE: Turn to page two and review that. Review your record.

Q You have your record in front of you, is that correct? You had testified on direct examination that you thought the doctor used a stethoscope to examine your eyes and throat. The fact is he used a stethoscope to check your chest and heart in addition to the other instruments he used for your eyes and throat, didn't he?

I'm not getting through to you. You don't understand what I'm asking you or what?

A Yes.

Q What don't you understand that I'm asking you? What is it you don't understand?

MR. LaBUE: Could I paraphrase the question?

MR. SHEBELL: No, I'd appreciate it if you wouldn't I understand that he's testifying here as a competent witness on behalf of the State and I don't understand that he doesn't understand English and he hasn't understood apparently anything in the way of questioning.

MR. LaBUE: That's not so. That's an (123) observation you made and I think if you'll ask him the question he will be able to answer yes or no. I'm sure he can give you an answer.

Q Would you tell me whether or not Dr. Vaccaro used a stethoscope on that day?

A Pardon me?

Q Did Dr. Vaccaro use a stethoscope on the first occasion when he examined you?

A (Witness not answering.)

MR. LaBUE: Can you answer that yes or no?

MRS. GAUTHIER: Perhaps he doesn't know what stethoscope means.

DR. DePERSIA: He said he used an instrument like—

MR. LaBUE: Can you answer that yes or no?

THE WITNESS: What?

MR. LaBUE: Can I ask the witness be excused. He seems to be unduly nervous. We can get back to his cross-examination.

MR SHEBELL: I object to his being excused. I think something should be done in the way of an examination to see what is wrong. I don't think he's nervous. He's not competent (124) to sit here and answer questions.

MR. LaBUE: I resent you remarks with the necessity of an examination. It's apparent to me, sir, he's unduly nervous and perhaps the reason for that is the nature of the questions or the tone that's used. Now, I have asked for a short recess to give him an opportunity to resolve that nervousness. If that's unacceptable, please continue to question him.

DR. ORNAF: May I ask him a question?

DR. ALBANO: Go ahead.

DR. ORNAF: Rick, when the doctor puts an instrument in his ears—you have seen these things, have you, and it comes down here (indicating) and at the end of that there's a round disk which he puts on your chest and that's called a stethoscope.

THE WITNESS: That's right.

Q Now, when the doctor examined you, did he use this instrument, yes or no?

A Yes, he did.

Q Where did he use it?

A He used it on my heart.

Q And did he check you both front and back when he used it on your heart?

(125) A (Witness not answering.)

DR. ORNAF: Did he listen to the front and back of your chest?

THE WITNESS: The back.

Q He did both?

A Yes.

Q Your report so indicates that he checked both your front and back with the stethoscope?

A Yes.

Q In addition to that he used an instrument on your eyes and throat, is that correct?

A Right.

Q And beside that, did the doctor take your pulse on that day?

A (Witness not answering.)

MR. LaBUE: Check your report and see if you can see if he took your pulse on that day. Take it easy, Rick.

MR. SHEBELL: I would like to enter an objection to the member of the Board reviewing his report and his investigation of it.

DR. ALBANO: I did not review his record.

MR. SHEBELL: Doctor, you took it from him and you're reading.

(126) DR. ALBANO: I'm showing him the date.

MR. SHEBELL: My objection is to being assisted.

DR. ALBANO: To what extent, sir?

MR. SHEBELL: You tell me what extent you were going to assist him. I'm asking him questions on the record for cross-examination and I think that he certainly should be able to answer them.

MR. LaBUE: Did the doctor take your pulse, if you remember? Just answer yes or no.

THE WITNESS: Yes, he did.

Q He also took your blood pressure, did he not?

A Yes.

Q And did you note whether or not in fact he wrote upon his treatment card at the time a diagnosis as to his opinion of your condition; did you note what he wrote on his report or treatment card?

A Yes, he did.

Q And you told the doctor that you were a student and was going to take exams and was having trouble staying awake for them?

A Yes, he did.

Q You told him that?

A Yes.

(127) Q And was there anyone with you on that first occasion when you went to the doctor's office?

A Pardon me?

Q On April 3rd, 1972 you went to Dr. Vaccaro's office, did you not?

A Yes.

Q And when you went there on that occasion did you first see a receptionist?

A On April 3rd?

Q Yes.

A Yes.

Q And you were weighed on that date, were you not, April 3rd?

A No, I wasn't.

Q You were not weighed on that day?

A No.

Q And your temperature was taken or not?

A No, it wasn't.

Q Neither one of those things happened on that day?

A Yes, I'm positive.

Q On the day of April 3rd isn't it a fact that Dr. Vaccaro attempted to examine you and you said, "I'm all right. I don't need an exam"?

A Yes.

(128) Q When did you next return after that?

A When did I next return after what, sir?

Q After the date of April 3rd, 1972.

A (Witness not answering.)

MR. LaBUE: Ricky, take it easy. Start at the front of the report. Go down after April 3rd and tell us when was the next visit.

A April 3rd—

Q When was the next visit after April 3rd?

A After April 3rd?

MR. LaBUE: Right. When was the next visit after April 3rd?

A April 17th.

Q Now, when you were there on April 17th you saw Dr. Vaccaro personally, didn't you?

A Yes.

Q He told you you were coming too close and it was too recent or too close to your previous examination?

A Yes.

Q When did you return to Dr. Vaccaro after that; would it have been May 18th?

A Yes.

Q Did you see the doctor on that date personally?

A Yes, I did.

Q And on that date did Dr. Vaccaro tell you and (129) caution you that you were not to get these too frequently?

A Yes, he did.

Q Now, were there occasions when you came to the doctor's office when you saw Barbara Dickerson, who was an employee of the doctor, at his office?

A Yes.

Q And you tried to convince Barbara that she should give you packages of the Biphetamines in addition to the ones the doctor was giving you?

A Yes.

Q And the doctor saw you on August 3rd, 1972 also?

A Yes.

Q And he saw you personally on that day?

A Yes, he did.

Q How long were you at Dr. Vaccaro's office on that date of August 3rd of 1972?

A About five minutes.

Q What time did you arrive there?

A About 5 o'clock.

Q Didn't you arrive there at 2:30 on August 2nd, 1972?

A Yes, I did.

Q And you were weighed on that day?

A Yes.

Q And what time did you leave the doctor's office (130) on that date?

A About 5 o'clock.

Q So you were actually there about what—two and a half hours?

A Yes.

Q Now, on some occasions when you went to the doctor's office, I take it you had other persons or other investigators with you, is that correct?

A Yes.

Q And Detective Moore was one of them?

A Yes.

Q And you and Detective Moore offered on occasion to give Barbara Dickerson money if she would take care of you on prescriptions?

A Yes, I did, okay.

Q Pardon me?

A Yes.

Q Now, specifically on August 3rd, 1972 you saw Barbara Dickerson and had a conversation with her at Dr. Vaccaro's office

A Yes.

Q She told you specifically on that date that the doctor was not aware of her giving you Biphetamines, is that right?

A Yes.

(131) Q She said she was doing it because you were nice guys and also she had three kids at home and anything you could give her would be appreciated?

A Yes, good, yes.

Q Now, these prescriptions and pills which you were getting from Dr. Vaccaro's office and from his receptionist there did you take any of those yourself?

A No, I did not.

Q At any time when you went to Dr. Vaccaro's office were you in ill health or any problems with your health?

A No, I did not.

Q You went there and there was nothing wrong with you?

A No.

Q Did you ever complain to Dr. Vaccaro of feeling ill or having any side effects from any of the drugs?

A Right, I did not.

Q There was never any occasions when Dr. Vaccaro refused to examine you when you requested an exam?

A No.

Q Just the opposite was the case. There was occasions when the doctor wanted to examine you, but you didn't allow him to exa ne you, is that right?

A Right.

Q Now, on each occasion when you went to the doctor's office you were weighed and your temperature was taken?

A Yes.

Q Now, did you tell Dr. Vaccaro that you also had an occupation beside being a student?

A Yes, I did.

Q What did you tell him your occupation was?

A Yes, I told him my occupation was—I worked in a factory.

Q I see.

On the various occasions when you went to Dr. Vaccaro's office approximately how long would you be there?

A About five minutes.

Q Well, October 26th, 1972, what time did you go to Dr. Vaccaro's office?

A About 5 o'clock.

Q Are you referring to page 11 of your report which deals with the October 26th, 1972 visit?

A Yes.

Q Does not your report state on October 26th you went to the doctor's office at 1:30 p.m.?

A Right.

Q And what time did you leave the doctor's office on that day?

(133) A October 26th, 1972?

Q Yes. You were there until about 6 o'clock on that day, right?

A Yes.

Q From about 1:30 to approximately 6?

A Approximately 6.

Q Each one of the occasions when you went to the doctor's office you would be there for several hours, would you not?

A Right.

MR. SHEBELL: I have nothing further.

MR. LaBUE: I have a few more questions.

REDIRECT EXAMINATION BY MR. LaBUE:

Q Do you know how much you weigh?

A About 145 pounds.

Q Has your weight fluctuated at all during the last year?

A Yes.

Q How much has it fluctuated, as an example, in March of last year, do you know about how much you weighed?

A 150 pounds.

Q Now, there was one other question and it had to do with your visit of April 17th. Would you please turn to page four of your report for me, please.

(134) A Yes.

Q April 17th.

A April 17th, page four.

DR. DePERSIA: The pages are numbered on top.

Q See April 17th?

A Page four, April 17th.

Q You have that?

A Yes.

Q Okay, the question was after April 17th what date was your next visit? Do you have that on that page also?

A May 2nd.

Q Fine. On May 2nd did you get a prescription on that date?

A Yes.

Q Okay, fine.

MR. LaBUE: I have no further questions. Thank you very much.

MR. SHEBELL: I have no more questions.

DR. ALBANO: You're excused.

DR. ORNAF: I would like to ask the witness a question.

DR. ALBANO: Go ahead.

DR. ORNAF: When you received the (135) prescriptions for Tuinal, do you know what Tuinal is?

THE WITNESS: Yes.

DR. ORNAF: Were they always handed to you by Dr. Vaccaro?

THE WITNESS: Yes, they were.

DR. ORNAF: Now, may I know what the instructions are on that prescription for Tuinal?

MR. LaBUE: Of course. I can't make it out. There are two of them here. They appear to be the same.

MR. SHEBELL: Perhaps we can give them to the doctor.

MR. LaBUE: There appears to be some unique code on them.

Do you want to bring them to the doctor, Mr. Shebell?

(At this point Mr. Shebell handed the prescription to Dr. Ornaf.)

DR. ORNAF: It's one at bedtime as needed. Now according to my record here—and I just kept some dates—you received a prescription for Tuinal on May 28th for thirty (30); on June 6th for thirty (30); on June 26th for (136) thirty (30). That would be roughly—in a month's time—a prescription for ninety (90) Tuinal capsules.

THE WITNESS: Yes.

DR. ORNAF: You received those prescriptions?

THE WITNESS: Yes, I did.

DR. ALBANO: Are there any other questions?

DR. DeCECIO: At the time when the doctor examined your chest with the stethoscope, did you remove your clothes for that examination?

THE WITNESS: I did.

MR. SHEBELL: I have a couple more questions.

RECROSS-EXAMINATION BY MR. SHEBELL:

Q On occasions when you caught the doctor and obtained the prescription for Tuinal, did you have a conversation with him about what happened to the pills in the meantime?

A No, I didn't.

Q Had no conversation with him about having lost the pills or stolen or anything like that?

A No.

(137) Q Did he just ask you why you needed the prescription in that short period of time?

A No, he didn't.

Q No conversation at all about that with the doctor?

A None.

Q And you say you have not reviewed your record concerning the treatment which the doctor rendered to you or the prescriptions he gave you?

A Right.

Q Is that right?

A Right.

MR. SHEBELL: That's all I have.

DR. ALBANO: That's all, thank you.

DR. DePERSIA: Would it be permissible to have the office record to review?

MR. LaBUE: I did not offer the records. I'll have it marked and introduced as Mr. DeMaeo or Mr. Domenic said he has not reviewed this. It's still here in the envelope. I'll show it to Mr. Shebell. If he feels that it's complete and has no objection to its introduction, I'll introduce it.

Mr. Shebell, do you want to compare it with yours?

(138) MR. SHEBELL: I don't think we offered the files on the other witnesses. I think we ought to mark all of them.

MR. LaBUE: All right.

At this time, insofar as Counsel has no objection, I'll offer a folder marked Rick DeMaeo and that includes one card entitled, "Statement," photocopy of driver's license in the name of Richard DeMaeo and three cards stapled together.

Would you please mark this in Evidence.

(File of Richard DeMaeo received and marked Exhibit S-84 in Evidence.)

MR. LaBUE: Mr. Shebell, would you care to examine David Williams' file?

MR. SHEBELL: No objection on David Williams.

MR. LaBUE: I also offer manila file entitled, "Williams, David" which includes a statement made out in the name of David Williams and two three-by-five cards stapled together.

Would you mark this please?

(File of David Williams received and marked Exhibit S-85 in Evidence.)

MR. LaBUE: If I may at this time I'd (139) like to call Dr. Chase.

DR. ALBANO: May I ask a question. Is this the complete file on these two individuals?

MR. SHEBELL: Yes, all three.

DR. ALBANO: I want to make a note. There's no suggestion of a history of the case or any type of physical examination that was given on both of these patients. It's a statement record and prescriptions and that's all. There's no indication that a physical has been done and no indication of a diagnosis.

MR. SHEBELL: Well, I don't think that's correct.

DR. ALBANO: You say they're complete. I make that comment on the basis that you say they're complete. I don't see a history or a physical.

MR. SHEBELL: With reference to Rick DeMaeo, I note the March 10th, 1972 that his weight was 151, temperature 98, blood pressure 125 over 82, has narcolepsy written underneath it. It says student must take exams. I can't make out something above it and it indicates prescription of Biphetamines.

DR. ALBANO: That's the history and (140) physical?

MR. SHEBELL: That's it as I have it here.

DR. ALBANO: There's no note of an examination of the head, the eyes, the ears, the nose, throat, chest, lungs, heart, abdomen, nervous reflexes; there's nothing about those things.

MR. SHEBELL: The man has already testified to that.

DR. ALBANO: I'm talking about his records. I'm not talking about what the man testified to. I'm talking about the kind of records kept by Dr. Vaccaro. The only history on this chart is, "He's a student. Must take student exams."

MR. SHEBELL: Has a diagnosis of narcolepsy, that's down, the blood pressure, the temperature. It's got the weight.

DR: ALBANO: And that's all he has as far as the physical examination is concerned, true or false?

MR. SHEBELL: This is the entire record as was taken by the Attorney General's office under a warrant.

(141) DR. ALBANO: Is there anything else missing from the record?

MR. LaBUE: I can indicate for the record that when the warrant was executed, the files that were introduced in evidence today were the files that were offered—and correct me if I'm wrong—as being the complete files in those cases. That was done under the warrant and the return was made to the Court on that basis.

I'd like to ask the doctor—

MR. SHEBELL: I object to your asking the doctor. He's not testifying here. I think it's improper to direct questions to him. There are the records taken from the doctor's office pursuant to the warrant.

DR. ALBANO: Okay.

Mr. LaBue, call your witness:

DR. WILLIAM M. CHASE, Sworn.

DIRECT EXAMINATION BY MR. LaBUE:

Q Doctor Chase, as you know, my name is Anthony LaBue. I'm the Deputy Attorney General and there is a matter before the Board today that concerns allegations that have (142) been made with the respect to the standard of practice of a physician. I have asked you to come here today to testify before this Board as an expert concerning that standard. Before we begin, I'd like to ask whether or not you know the respondent in this matter, Dr. Vaccaro?

A No, sir, I do not.

Q Then, Doctor, would you kindly state your profession for the record?

A I'm a physician specializing in internal medicine.

Q When were you graduated from medical school?

A I graduate from Meharry Medical College, Nashville, Tennessee in 1947.

Q And when were you licensed in the State of New Jersey?

A On November 28th, 1948.

Q Have you had any postgraduate training after graduation from medical school?

A Yes.

Q Would you please indicate what it was for the Board?

A I had graduate courses in cardiology in Seton Hall, that was in 1966; I have taken executive years between 1969, '70, '71 and '72; postgraduate courses in cardiology at Harvard Medical School Brigham Hospital. I have had courses at Temple University in orthopedics and traumatic injuries under Henry Moss. I have also been engaged in advance work (143) in cardiology from time to time in Philadelphia and Meharry Medical College, the last of which was 1972.

Q Doctor, do you currently engage in private practice?

A Yes.

Q Where?

A I'm presently practicing in the City of East Orange, 212 South Burnett Street.

Q How long have you been engaged in private practice?

A This is now my 26th year.

Q Do you also have any other employment in addition to that private practice?

A Yes, I do.

Q What is that?

A I'm Director of the Bureau of Health Education Service for the City of Newark, Board of Education. I was until April 15th, the Medical Director of the Betsy Smith Health Center; Chief of the Chest Diseases Clinic at St. James' Hospital, and I'm a member of a number of committees and of the Essex County Medical Society and of the North Jersey Medical Society.

MR. LaBUE: I would like to offer Dr. Chase as an expert to this Board subject to any cross-examination you have.

(144) MR. SHEBELL: I have no cross-examination of his qualifications.

MR. LaBUE: Fine.

Q Dr. Chase, are you familiar with the term Biphetamine?

A Yes, I am.

Q Would you please indicate to this Board what a Biphetamine is?

A A Biphetamine is an amphetamine drug, dextroamphetamine drugs or a drug which is of such a chemical nature as to be used specifically for an appetite depressant, a reduction of the desire to eat, and a craving for food. It is frequently used in reducing regimen, as an adjunctive form of therapy to diet and to help a person lose weight.

Q Are you also familiar with the drug Tuinal?

A Yes.

Q Could you indicate to the Board what Tuinal is and what it is used for?

A It's a short-acting barbituate, the purpose of which is to induce sedation, a calming effect on the central nervous system. It is a central nervous system depressant. It is primarily used to counteract and allay the anxiety and also to produce sleep.

Q Doctor, do Biphetamines have any recognized medical use, and if so, could you indicate to the Board what (145) they are?

A Well, specifically there are two uses for amphetamines at the present time. As I just said, the primary use, at least the most popular use, is as an appetite depressant. More recently, within the last few years, in the area of neurology and psychiatry, amphetamines are being used to alter the behavior pattern of children suffering from hyperkinetic activity and emotional instability. As to this extent, this is a relatively new field and there has been some success with it. But for the most part, it's most popular use is in the area of weight reduction and obesity.

Q When you say children, could you indicate the age group of the children that could be treated for hyperkinetic behavior?

A I would say they vary from as young as five and six up to the early teen-age bracket.

Q Now, is narcolepsy also an indicated use for Biphetamines?

A Yes, it is, when you can specifically demonstrate the existence of narcolepsy.

Q How could one make a working diagnosis of narcolepsy?

A Narcolepsy is a disease of the brain where there is an alteration in the alert pattern of the brain so that a

person is found sleepy or drowsy at times when this would not be (146) normally expected. There is a distinct encephalogram pattern characteristic of this central nervous system illness.

Q Could you indicate for the Board what steps would be necessary to diagnose narcolepsy?

A Yes. The first thing of course would be to rule out the existence of illnesses and diseases of a metabolic nature which tend to resemble narcolepsy, for example, the existence of high blood sugar level which produces drowsiness; the existence of any sedative therapy which the bloodstream would have a high concentration and, therefore, produce an action, physiological action, resembling narcolepsy. Having ruled out the metabolic or toxic disturbances, then one would determine by the use of electroencephalogram whether there's an abnormal brain wave pattern which would resemble narcolepsy.

Q Would tests of that nature take a considerable period of time; how long would it take to diagnose a patient suffering from narcolepsy?

A I dare say if he went to an all-day session—let's say, for example, the patient was referred to a diagnostic center like the Mayo Clinic, I'm sure the diagnosis could be arrived at in two days.

Q Fine.

Now, Doctor, I have one other question. Are you familiar with Parest 400?

(147) A I beg your pardon.

Q Are you familiar with Parest 400?

A Yes.

Q Could you indicate for the Board very briefly what it is and what it is used for?

A Parest 400 is a hypnotic drug or sedative drug of recent vintage. It falls into a short-acting barbituate weight type of action. I think it's presently produced by Parke-Davis and it's used to induce sleep.

Q Now, doctor, I'm going to ask you a hypothetical question. The question is going to concern facts which were admitted in evidence in a case before this Board. In other words, I'll ask you to assume certain facts as true and give an opinion based on those facts. Will you be able to do that for us, Doctor?

A I think so.

MR. LaBUE: I think at this time I should provide a piece of paper for the doctor, if you don't mind, Mr. Shebell.

MR. SHEBELL: Not at all.

Q Doctor, I'm going to ask you to assume that a male that weighed about 145 to 150 pounds and is about 22 or 23 years of age, appears at a physician's office and he indicates that he's a student and he'd like something to help him keep awake. The hypothetic continues in that he (148) visited the doctor's office on March 10th and received an extremely limited physical examination and was dispensed 28 Biphetamine 20's. It continues that on April 3rd following he again appeared and received 28 Biphetamine 20's.

A What was the second date?

Q April 3rd. It continues that he reappeared on April 17th and received 28 Biphetamine 20's, reappeared on May 2nd and received 28 Biphetamine 20s and a prescription for thirty (30) Tuinal, 3 grain. It continues he reappeared on May 18th, received 56 Biphetamine 20's and a prescription for thirty (30) Tuinal, 3 grain. It

continues he reappeared on June 6th and was dispensed 28 Biphetamine 20s and again a prescription for thirty (30) Tuinal, 3 grain. On June 26th, he reappeared and was dispensed 56 Biphetamine 20's and a prescription for thirty (30) Tuinal. On July 6th, he reappeared and was dispensed 28 Biphetamine 20's and a prescription for thirty (30)Tuinal. The testimony further indicates he appeared on July 20th and was refused any medication. Subsequently he appeared on July 27th and received 28 Biphetamine 20's, dispensed a prescription for thirty (30) Tuinal, 3 grain. He appeared on August 3rd and was dispensed 28 Biphetamine 20's and a prescription for thirty (30) Parest 400. The testimony further indicates that he appeared on August 10th and August 14th and was refused on both occasions. He further appeared on August 21st and received 28 Biphetamine (149) 20's dispensed. On September 7th he reappeared, received 56 Biphetamine 20's, 28 Biphetamine 12½'s and a prescription for thirty (30) Tuinal, 3 grain. He appeared again on September 27th, again was dispensed 28 Biphetamine 20's and a prescription for thirty (30) Tuinal, 3 grain. He reappeared on October 11th, received dispensed 28 Biphetamine 20's and a prescription for twenty (20) Tuinal, 3 grain. He reappeared on October 26th and received a prescription for 28 Biphetamine 20's and a prescription for thirty (30) Tuinal, 3 grain. His last visit occurred November 15th and the testimony indicates that he received 28 Biphetamine 20's, 28 Biphetamine 12½'s and a prescription for thirty (30) Tuinal. Therefore, Doctor, some of the testimony indicates that this young male, approximately 22 or 23 years of age, weighs between 145 and 150 pounds, over an eight-month period, received a total of 532 Biphetamine 20's, 56 Biphetamine 12½'s, subscriptions for 290 Tuinal and 30 Parest. Now, Doctor, assuming the foregoing to be true, do you have an opinion

based upon reasonable certainty as to the character and nature of the doctor's practice with respect to dispensing and prescribing this medication?

A Yes, I do.

Q Could you indicate for the benefit of the Board what the opinion is, Doctor?

A I would say that this deviates from the pattern of (150) standard practice with respect to monitoring a patient or treating a patient. If we assumed that this patient is to be considered obese—I didn't get the height of this young man.

Q The height was introduced into evidence as part of his driver's license. May I have his record, please.

MR. SHEBELL: I object to that being used to determine his height because the fact is it's our understanding that was applied to him by one of his superiors and obviously a fictitious license. I don't know if it's accurate.

MR. LaBUE: It's fictitious in name only.

I'd like to indicate he's five six. He appeared before the Board.

Would you have any objection if we characterized him as five six, Mr. Shebell?

MR. SHEBELL: I would think that is probably right.

Q He's five feet six inches tall, Doctor.

A Well, if we accept the guidelines set by the insurance industry with respect to a set of normalcies for height and weight, then one would say that a person at this age, 22 years of age, five foot six inches, weighing 145 to 150 pounds (151) would fall within the normal height and weight range, certainly not exceeding the 20 percent al-

lowable variation for height and weight. But let's presume that there's a 10 to 15 pound excessive weight. Then certainly, one would expect to reduce this patient using the standard amount of amphetamine drug therapy, which in my opinion would consist of enough medication given, particularly this particular drug as I understand it has a characteristic of some prolonged action so that it need not be taken three times a day. So therefore, the dosage of amphetamine, 20 millagrams, would be one dose given before breakfast in the morning, at two-week intervals. That's 14 capsules given every two weeks for a period of not more than three to four months and should reduce this patient to a level of 125 to 130 pounds which then would be consistent and certainly well within the normal standard of weight for a 22-year older at this height. Anything in excess of this I would assume would have some effect on this young man's health. Certainly, 532 Biphetamines, 20 milligram dosage, 56 Biphetamine, 12½ milligram dosage is certainly a deviation from what I would consider the standard of practice in treating this particular entity. The Tuinal to the tune of 290 capsules, I would certainly say—going beyond the four-week level, perhaps the eight-week level, there should have been some clinical evidence of (152) central nervous system irritability from that amount of amphetamine drugs if indeed they were taken. The end result would be the necessity of some kind of counteracting to allay the hyperactivity which would be produced by amphetamines. Amphetamines generally have the propensity of exerting an excitation, an increase in central nervous system activity after prolonged use, and the sensation of being overly energized to the point that you're feeling you're like a perpetual motion machine. So there would be some need to give something to calm him down, and certainly the selection of a sedative would be indicated. However, Tuinal goes beyond the action of

sedation. This is a hypnotic and would produce sleep in the quantity of 3 grains as given at bedtime, and certainly two capsules or 6 grains at bedtime would be in the order of the required amount in the light of all of this pattern of amphetamine given. In general, I would say that this is a considerable deviation from the standard of practice for the information given. I assume that this is purely for weight reduction.

Q Let me ask you this. Is it acknowledged that amphetamines and Biphetamines have a substantial abuse potential, and is that one of the reasons why they're monitored as you have indicated in terms of two weeks' dosage?

A Yes, sir.

Q You have used the term considerable deviation. (153) Again, with respect to the hypothetical, the standard for this Board is a standard of gross malpractice or gross negligence in the practice of medicine which endangers the life or health of any person. That has been interpreted by this Board to mean a substantial deviation from the standard. In light of the hypothetical that I have given you, would you consider this practice such a substantial deviation?

A Yes, sir.

Q Now, if I may, there's an additional hypothetical I'd like to give you and I may be able to cut this one down considerably. We have a situation where again, this time over a five-month period 392 Biphetamine 20's and 28 Biphetamine 12½ for a total of 400 Biphetamines were dispensed and 240 Parest were prescribed. These are Parest 400's, Doctor. Again, these were part of the hypothetical situation wherein a young man in his early 20's visits a doctor's office and indicates that he's playing in a band, and I think the testimony was "liked to keep awake and

liked to feel good," whereupon this regimen was introduced. Now again, if I may, sir, with respect to the figures that I have given you, and these are overall figures and I can break it down if you insist on that, sir, would you consider such a practice a substantial deviation from the standard?

A Yes, sir, I would.

Q Could you alludicate on that a little * * * * * (154) for us, the reason for the determination?

A Yes. The use of amphetamines is a therapeutic method of alleviating drowsiness and sleep as a totally therapeutic irrational use of amphetamines per se. They're not in any way indicated as a means for keeping awake. Prolonged use of amphetamines for this purpose alone can produce serious central nervous system complications as it does in the prolonged use of amphetamines for weight reduction. There can be created a dependency relationship for amphetamines so that one will rely on them and use them as a crutch to interfere with normal sleep processes. Here we have a paradoxical situation because one is using amphetamines to allay sleep and, on the other hand, providing Parest 400 milligrams to induce sleep. Certainly, the implication is there. As I read it it would be that the natural processes of sleep had been interfered with as to such an extent that now the patient requires something to make him go to sleep. I would interpret that as being grossly abusive with respect to the use of amphetamines and certainly a wide deviation from the therapeutic indications for the drug.

Q Thank you, Doctor.

I have one more short hypothetical. This concerns a young lady who hypothetically appears at a physician's office and indicates that she works for the phone company

and necessarily must stay awake through the night. On her (155) first visit she received a prescription for thirty (30) Obedrin-LA tablets, which I'm sure you're aware as meth-amphetamines hydrochloride and phenobarbital. Subsequently she received Biphetamine 20's and from the period of 4/17 to 11/21 would have received or has testified to having received 588 Biphetamine 20's. Now again, based on that hypothetical, do you have an opinion with respect to the standard of practice demonstrated here?

A Yes, I do. First of all, Obedrin is a drug which was specifically designed as an obesity drug. It was a combination of amphetamines and a different formula amphetamine from the usual dextroamphetamine base—that is, it's compounding. A methamphetamine, the structure of this drug, is such that it was believed that the overall central nervous system depression and excitation, which is characteristic of most amphetamines, would be reduced and that its appetite reduction effectiveness would be potentiated. To this was added, as a therapeutic entity, phenobarbital for the purpose of taking the edge off the hyperactivity of the amphetamine when an excess amount of it might be present in the blood stream. Obedrin is not signficantly typical of biphetamines because it can be given in dosages of three a day each, a half-hour or an hour before meals, and preferably and during the waking hours the last dose to be given somewhere around 4 to 5 o'clock in the afternoon as to not interfere with sleeping. (156) But this specific drug was designed so that its appetite curtailing aspect would be the most effective and the most utilizable aspect of the amphetamine derivative. Therefore, in the eyes of the pharmacological development of it, those that had the distinction of developing it was for a more effective appetite reduction type of drug. So to select Obedrin as the drug of choice to permit a pa-

tient to stay awake longer in order to be more effective as a phone operator to me is therapeutically in error. This is not the type of drug one would select, but then to switch over to Biphetamine 20's, 20 milligrams, obvicusly the Obedrin did not work out too well, so the Biphetamine was a better drug of choice. But here again, the primary basis for prescribing either the Obedrin or Biphetamine for staying awake is not the correct utilization for this type of drug since both were originally designed for appetite reduction, and Obedrin specifically for appetite reduction.

Q Would the dispensing of the Biphetamine in the quantities on the dates or during the dates that I have indicated be an indication of a substantial deviation from the standard of conduct expected of a physician to constitute gross malpractice or gross malpractice in the practice of medicine which endangers the life or health of any person?

A Yes, sir.

MR. LaBUE: I have no further questions (157) at this time.

DR. ALBANO: All right, Mr. Shebell.

CROSS-EXAMINATION BY MR. SHEBELL:

Q Doctor, I have just a few questions.

You indicated of course that the drugs that have been mentioned here should not be used merely for the purpose of keeping someone who desires to be awake for a specific purpose. These drugs might very well be used if the person was suffering from obesity and it was reducing their drowsiness or inability to stay awake, isn't that correct?

A Not entirely, sir. Let's examine the patient who is obese to the point where it affects their ability to stay

awake. I can bring to mind initially one such instance and that is of a metabolic disorder which we refer to as myxedema. In this instance if we describe a patient who is myxedemus, we're talking about a person who demonstrates a marked increase in weight over a short period of time, and one who has a markedly and substantially reduced thyroid function, and as a part of this thyroid undermetalobolism or thyroid underactivity, there's a change in the texture of the skin and a change in the alertness of the patient with drowsiness being one of the presenting symtoms. Weight-wise, we're talking about a patient who, for the most part, let's say, they're large-framed, five foot seven or better, has a (158) weight in the level of 200 or 210 pounds and on up—some myxedemus patients can weigh as much as 300 pounds—they are lethargic and will go to sleep while you're talking to them. So obviously, it is that type of lethargy. In that instance amphetamines in any form is not the drug of choice for the treatment of this illness, but rather once the diagnosis of an underactive thyroid is made, we treat the immediate condition by giving them thyroid medication and as soon as the metabolic is reestablished they lose weight by simply adhering to weight-reduction diet alone. I can't conceive of lethargy and sleepiness and drowsiness as being a single chararcteristic symptom of obesity per se, and I have seen some pretty large people in my practice.

Q Of course, in your examination you have introduced the fact that there was another illness present which caused the obesity.

Doctor, with respect to the answers you have given to the questions put to you on the hypothetical question, I take it you have assumed that these drugs which were prescribed and dispensed were given by the physician himself rather than any situation where the drugs might have been

given by someone else in the office without the doctor's knowledge and for reasons of their own, is that right?

A Yes, sir, that's my assumption.

Q And Doctor, can a person five feet tall, female, (159) and weighing 134 pounds be classified as obese?

A Absolutely not; I wouldn't say so.

Q Does it not depend on seeing the person and how they appear?

A Yes.

Q And that's the only way really you can determine when a person is obese by looking at them and determining where the weight actually resides or exists in the individual?

A That's correct, sir.

Q Doctor, Parest 400 or Parest itself is not a drug abuse item or a controlled dangerous substance, is it?

A From the standpoint of it being designated as a dangerous drug per se, the answer is no. But our experience demonstrates now that it is a drug abused item by virtue of the more recent information that comes to our attention from the streets as we frequently get our information about drugs.

Q The proper use of it medically is a drug which is given at bedtime?

A That's correct.

Q For a person who would have a problem sleeping?

A That's correct.

Q Now, Doctor, where there's abuse of the amphetamine as you have indicated and an aggravation or a prob-

lem created with the central nervous system and irritability of the nervous system, this is something that a doctor can (160) quickly and easily see insofar as an observation of the patient?

A Let me answer that question in this way. It takes time to arrive at an opinion that the patient is suffering from toxic manifestations of amphetamines. One can't look at the patient and immediately arrive at that opinion instantly. It's not an immediate apparent situation at all. But if you have a patient to whom you have been giving amphetamines over a long period of time, one of the things that you would be alerted to watch for is the change in the person's personality. They have a hyperirritability; they're short-tempered; they run off the handle rather faster than usual; they're impatient; they seem to be in a state of constant motion all the time; they have symptoms of hyperactivity, and of course, you know then that you're approaching a toxic level with the use of amphetamines.

Q Certainly if a patient had to wait many hours in a doctor's office to see them, by the time the doctor got to see them some of those things you mentioned would be obvious to the doctor such as the irritability and the like?

A Yes, sir, I would say so.

Q Doctor, what you understand to be the significance of the term that was given you in the hypothetical question by the Attorney General here that there's an extremely limited examination made of the patient by the (161) doctor, what did you understand to have taken place? What do you think was meant by an extremely limited physical examination?

A I assume that the patient had his height, weight and blood pressure taken.

Q And you excluded he would have his heart listened to, both chest and rear?

A Yes, sir.

Q You understood this to be excluded?

A Yes.

Q You understood looking into the eyes also with an instrument to be excluded?

A Yes, sir.

Q Doctor, have you yourself prescribed and worked with the various drugs that you have mentioned here today?

A Yes, sir, I have.

Q Is that through your office that you have prescribed or dispensed them?

A I write prescriptions; I don't dispense them.

MR. SHEBELL: I have nothing further of the doctor.

MR. LaBUE: I have a few more questions.

REDIRECT EXAMINATION BY MR. LaBUE:

Q Doctor, with respect to the hypothetical, (162) concerning the scope of the physical examination that's given, you have indicated you feel that a limited physical examination would not include listening to the heart and also examining the eyes and the throat. Let me ask this. Also with respect to the hypothetical that I asked, would it in your opinion be a substantial deviation for the pattern of treatment that I have indicated, the alleged treatment that I indicated to be continued over that length of time with the frequency of dispensing and/or prescribing the quantity of dispensed or prescribed without continual

physical monitoring, in other words, is an initial physical examination sufficient?

A No, it isn't. Amphetamines, as they approach the toxic level, can produce changes in the cardiac mechanisms as well. We frequently see arrhythmias, tachycardias, or be it a regular sinus rhythm with respect to the heart rate occurring from overuse of amphetamines. A sinus tachycardia is perhaps one of the commonest forms of arrhythmias associated with excessive amounts of amphetamines. More especially, the increase in cardiac rate associated with amphetamines superimpose—let's presume on an already damaged heart. Let's say someone who has had rheumatic fever with valvular incompetency and there's in evistence some disturbance in the electric conduction system and you have not determined this at the outset. Such a person on prolonged use of amphetamines could very well go into more commonly dated forms (163) of physiological arrhythmias associated with this type of combination, for example, you may get an electric conduction mechanism whereby the auricles and ventricles are beating out of pace with each other because the promulgation of the electrical wave is not carried through to its ultimate end. The promulgation then is further throughout the ventricles, the sum total of which allows for a uniform rhythm of the auricles and ventricles in a synergetic way. If you already have an electrical conduction disturbance and is seconded to rheumatic fever where the auricles are beating at one speed while the ventricles are beating at another, and you superimpose on this the toxic effects of an amphetamine which would speed up the ventricles, you now endanger the person's cardiac status by producing poor cardiac output. That's the volume of blood pumped by either ventricle is either less and less because its filling is interfered with by the rapid rate of the heart. In addition to this,

assume that a patient is not properly examined and there is a congenital defect, a hole in the heart between the two chambers and you induce a rapid rate of ventricles and auricles together by causing a sinus tachycardia, here again, you're interfering with the cardiac output simply because it is already altered. The heart is placed on an additional strain because the increased rate would interfere with the filling capacity of the chambers of the heart, not allowing (164) even for the cross flow between the two chambers by virtue of the hole being in the heart. One must not just embark upon a routine of using amphetamines no matter for what purpose without ascertaining the status of the patient before you place him on the drug. I should say that examination of the heart, pulse, blood pressure, as well as the weight is a proper examination for this type of therapy.

Q My question, sir, is continuing physical monitoring with respect to those areas that you have indicated also required?

A Yes, because a rise in blood pressure can occur with prolonged use of amphetamines.

Q I have a question concerning the treatment of obesity. Is the Federal standard with repect to short-term obesity control-limited to exogenous obesity?

A Yes, exogenous obesity is the term that is applied to obesity which is derived from compulsive ingestion of food. It does not apply to obesity which presents itself as a symptom relative and metabolic disorder, and particularly, to endocrine disorder for which there are a number of causes, although rare, where obesity is the presenting symptom there. I'm talking about the pituitary function, the thyroid function in this case.

MR. LaBUE: That's all I have of the doctor.

(165) DR. ALBANO: Anything further, Mr. Shebell?

MR. SHEBELL: Yes.

RECROSS-EXAMINATION BY MR. SHEBELL:

Q Nowhere included in the hypothetical was anything about the patient lying to the doctor as to whether he was taking the pills or whether the pills had been lost or stolen from him, is that correct?

A No, sir, there wasn't.

Q And in order for there to be any of the toxic effects you have indicated here, the patient of course would have to be taking the amphetamines and not merely there as an undercover agent and passing them to his superior?

A Absolutely.

Q And you would expect a person suffering from toxic effects of amphetamine overdoses to have some subjective complaints, would you not, such as palpation, nervousness, things of that nature?

A That's correct.

MR. SHEBELL: That's all I have.

DR. ALBANO: Are there any questions by any members of the Board?

DR. ORNAF: Would you inform us, the members of the Board, is it true that since the (166) amphetamines have come under BBND, it has been the practice in the medical profession, expounded by our associates and medical experts, that the use of amphetamines in obesity probably could never go beyond two or three months because they lose their effectiveness?

THE WITNESS: That's correct, sir.

DR. MATFLERD: Dr. Chase, would you be able to look at three records and tell us whether or not there's an adequate history and physical and follow-up and documentation?

THE WITNESS: Yes, sir.

MR. LaBUE: Here's two and here's the other one.

Those are the complete records of that patient indicated there, Doctor.

THE WITNESS: The patient is Rick DeMaeo, 74 Bay Avenue, Highland, New Jersey. The records are on what appears to be a three and a half or four and a half by five and a half card. It contains the name and address and the date and the age. A blood pressure is recorded; a temperature; a weight. There's a sketchy note on the initial visit of 3/10/72 which I can't really read. On 4/3/72, about (167) three weeks later, there's nothing more than a weight and temperature. There's no blood pressure reading. It's interesting to note there's a one pound loss of weight after receiving Biphetamine 20's and the number that was dispensed is not noted on here. 5/2/72 is the next date. Only the weight—and there was no weight loss between 4/3/72 and 5/2/72. On 4/17, just the weight and temperature. On 5/18/72, a weight of 150 pounds, Biphetamine 20 times 28, two packages—and I assume 28 means the number of pills in a package—Tuinal, number 30, RX—meaning the prescription was given. On 6/2/72, again Biphetamine 20 by 28; weight 150 pounds; Tuinal given. 7/6/72 weight 150 pounds; Biphetamine 20 by 28; Tuinal number 30. On 7/27/72, weight 148; Tuinal and Biphetamines. On 8/3/72, Parest (30) 400 milligrams, Weight 150; Biphetamine 20's by 28.

I would say that in general that there's no significant history found in this record which would give any indica-

tion as to why the drugs were being given, and certainly no notation of anything progressing with respect to (168) the weight loss. I would expect somewhere along the line a conclusion to be made either that there's a poor progress with respect to weight, or that another drug might be more effective or that in general, the patient was not cooperating well or was cooperating, and the most significant thing of all, as I can see, is that the use of these drugs alone by themselves without some sort of dietary restriction means nothing. You give them some sort of instructions with respect to diet, eliminating the carbohydrates, staying off the sweets and soda, cutting down on the ice cream, staying off beer, staying away from alcoholic bevarages, increasing the protein content of the diet. All of this is a part of the treatment of obesity and the use of amphetamines is only an adjunct to this form of treatment. There's no mention of any dietary regimen at all in the record.

MR. LaBUE: Let the record reflect the doctor was reviewing S-84 in Evidence.

DR. ALBANO: May I ask Dr. Matflerd to repeat the question?

DR. MATFLERD: Dr. Chase, do you think (169) from looking at the record—do you think there's an adequate record of the history, follow-up in the chart?

THE WITNESS: No, there's no adequate history and physical. I'm looking at the record of David Williams of 622 Springfield Avenue in Newark. My opinion remains the same. There's no adequate history or physical and follow-up notation here.

DR. ALBANO: Is there any history?

THE WITNESS: No, there isn't.

DR. ALBANO: Is there any at all?

THE WITNESS: Well, in the case of David Williams of 622 Springfield Avenue in Newark—what I can read of the entry of 6/15/72, which I assume is the initial visit there's a notation of narcolepsy.

DR. ALBANO: Is that history or diagnosis?

THE WITNESS: That would be diagnosis, but no history. There's no history at all that I can see and certainly no physical examination.

DR. ALBANO: Whose record is that?

THE WITNESS: This is David Williams.

DR. ALBANO: Would you look at Mr. (170) DeMaeo's chart and answer the same question? Is there a history and is the physical examination adequate?

THE WITNESS: On 3/10/72—if I can make it out—it says "narcolepsy—can't stay awake—student—must take exams." That's all that there is to the history and there's no evidence of a physical examination other than the notion of the blood pressure, weight and temperature.

DR. DeCECIO: May I ask Dr. Chase if there is anything in the record you have just looked at that substantiates the diagnosis of narcolepsy?

THE WITNESS: No, sir, nothing that I would recognize.

DR. DeCECIO: Might I ask Dr. Chase another question.

Dr. Chase, if a patient came to you and in your opinion you were contemplating the use of amphetamines, the therapeutic regimen, what would be the reasonable extent of your examination of that patient both physically and

whatever other modalities you might deem necessary before you embarked upon treating (171) that patient with amphetamines?

THE WITNESS: An examination would consist of a check of the patient's blood pressure, pulse, weight, heart, measurements of the thickness of the panniculus which I have been doing for the last five years now. I think this is important because there's frequently a redistribution of fatty layer and I find it important to do a simple unified blood chemistry on the patient, number one: a blood sugar; number two: a cholesterol and a BUN, and I think this gives you a reasonably good profile of the patient's status before starting them on a reduction, a weight reduction, and of course, the history is the most important thing with respect to any of these weight reduction routines that you start off with. I try to ascertain how long they have been as heavy as they are; is it something that came on recently or have they been heavy all their lives; what did they weigh at 16 or at eight or 10 or 12 years of age; whether there's anything unusual in their menstrual background; whether or not they have variations in their emotional make-up; their marital life. These are (172) important because compulsive eating is the key to obesity in the American way of life today and especially in the patients that I see because they eat for escape and you can automatically predict your success or failure with these patients when you get this kind of a history and I have never treated them for more than five months unless I see some adequate progress. If I see substantial progress, I might elect to go on beyond the five-month period of time with periods of rest in between as I take them off the drug entirely. They may be away from me for as long as a year and a half or two years. They may come back.

DR. DeCECIO: How long would you say the initial evaluation would ordinarily take?

THE WITNESS: With me it varies. On an average I get the complete work-up done in about two days.

MR. SIDOTI: When you say the heart, do you mean an electrocardiogram?

THE WITNESS: Sometimes it's necessary, yes, especially if I hear some irregularity. I have done electrocardiograms on these patients. I picked up a myxedema case in just (173) that fashion by detecting irregularity of the heart. I was about to put the patient on a reducing regimen when I discovered she was myxedemus.

MR. SHEBELL: I'd like to ask the doctor a few more questions.

DR. ALBANO: Go ahead.

CONTINUED RECROSS-EXAMINATION BY MR. SHEBELL:

Q You're not saying the electrocardiogram is required, are you?

A No, sir, I do not say that.

Q Likewise, you say it's desirable to have the various blood tests and the BUN and it's certainly not necessary or required to stay up on the standard of good medical practice, is it?

A Every case, of course, is a case onto its own. There are some simple cases which I would not go through the routine.

Q With reference to Rick DeMaeo, have you ever seen or examined him?

A No.

Q You have referred and offered an opinion as to the type of exam that took place after looking at his treatment

card. Now, that treatment card has nothing down (174) there about the fact that his heart was listened to, both front and back, does it?

A No.

Q You have no personal knowledge of whether or not that was done on March 10, 1972, is that correct?

A No, sir.

Q And it has nothing in there about whether any instrument was used to examine the eyes, ears, nose or throat?

A That's correct.

Q As a matter of fact, don't you find that many physicians make no notation of such an exam; it depends on the doctor and his personal habits and how busy he is?

A I might answer that this way. I'll acquiesce by saying this might be very true, but it's certainly not good practice.

Q Not by hind sight?

A I don't mean that in that way at all.

Q The fact is insofar as Rick DeMaeo is concerned, there's nothing in his chart whatsoever to indicate he was on a weight-reduction program, is there?

A That's correct.

Q He lost no weight under it?

A That's correct.

Q As a matter of fact, that chart indicates that (175) the diagnosis as written by the doctor is narcolepsy, is that right?

A Yes.

MR. SHEBELL: That's all I have.

MR. LaBUE: May I ask a few more questions of the doctor?

DR. ALBANO: Go ahead.

REDIRECT EXAMINATION BY MR. LaBUE:

Q Doctor, you have indicated that certain exams may or may not be recommended for a therapeutic regimen of amphetamine. I assume, and correct me if I'm wrong, that you were talking about situations where amphetamines are medically indicated and not where they're specifically requested by anyone off the street?

A That's correct.

Q Again, correct me if I'm wrong; are you speaking about situations of obvious obesity coupled with some type of dietary regimen wherein it's medically indicated?

A That's correct.

MR. LaBUE: That's all I have.

MR. SHEBELL: That's all.

DR. ALBANO: Thank you, Dr. Chase.

(176) EDWARD TUMMINELLO, Sworn.

DIRECT EXAMINATION BY MR. LaBUE:

Q Would you state your name for the record?

A Edward Tumminello.

Q By whom are you employed?

A The Enforcement Bureau.

Q Did you have occasion on November 28th to serve an administrative warrant?

A Yes.

Q Upon who?

A Dr. Vaccaro.

Q Subsequent thereto, did you have occasion to enter Dr.Vaccaro's office for the purpose of removing items from the doctors' premises that were voluntarily surrendered by the doctor?

A I did.

Q Do you have any recollection of the quantity of the items that were removed?

A Yes.

Q Could you please indicate to this Board what was removed on that date?

MR. SHEBELL: I'm going to object to that unless there's also offered, in all fairness, testimony concerning the quantity of medications and other drugs which the doctor (177) said were not abusive items such as the various myosins and other medications and penicillin and the like. It's unfair to give a figure of a certain drug and not have that in proportion as to the size of the doctor's practice as it pertains to the treatment of other types of treatment and whether or not they are related for other types of illnesses. I think we have had testimony presented to this specific incident before the Board and I think the only purpose of this is by way of prejudice in putting it out of relation to the size of the doctor's practice.

DR. ALBANO: Objection overruled.

You may continue.

A On December 19th, 1972 I visited the doctor's office and removed--these are approximate figures. There's a complete inventory of which I have a copy of here. There

were approximately 248,000 tablets and capsules all of which were controlled dangerous substances. Of these, approximately 160 to 200,000 were amphetamine items and that's broken down to specific capsules and tablets. Twenty-seven thousand of those were dextroamphetamine capusles and 65,000 were delcobese tablets.

MR. LaBUE: Thank you very much.

DR. ORNAF: Did you at any time find or (178) get any records to show the names and dates as to the dispensing of these amphetamines? Did you come across that or look for that or find it?

THE WITNESS: At the time the warrant was served, we did check the records for controlled dangerous substances which had been dispensed and an inventory was conducted by the State Department of Health.

MR. LaBUE: Maybe this will answer your question, Doctor. There's a specific log that is required to be kept when items are physically dispensed.

Mr. Tumminello, did you have an opportunity to review such a log?

THE WITNESS: I observed the log, but I did not personally review it.

MR. SHEBELL: I would like to ask the witness a question.

DR. ALBANO: Go ahead.

CROSS-EXAMINATION BY MR. SHEBELL:

Q Isn't it a fact that some of the amphetamines you found were up to 20 years old?

A I can't specify the exact date. I observed some items (179) that appeared to be quite old.

MR. SHEBELL: I have nothing further.

MR. LaBUE: Thank you very much, sir.

Gentlemen, at this time I rest.

DR. ALBANO: Do you have any witnesses, Mr. Shebell?

MR. SHEBELL: Yes, I do. I would like to call Dr. Samuel Stevens.

DR. SAMUEL STEVENS, Sworn.

DIRECT EXAMINATION BY MR. SHEBELL:

Q Dr. Stevens, you're a licensed physician and practicing physician of the State of New Jersey?

A Yes, sir.

Q Would you briefly give us your background and qualifications?

A Graduate of New York Medical College in 1947; I interned at Queens General with a surgical resident in Baltimore, Maryland; I have a surgical residency at Monmouth Medical Center in Long Branch. I was in Bellview. I went on active duty with the Second Team in Korea with the 11th Airborne, went to Korea and came back from Korea and went to New York City Hospital. I opened an office in 1953 in Asbury Park. I'm certified by the American Board of Surgeons and I have my FACS and FICS.

(180) Q Do you know Dr. Vaccaro?

A Since high school.

Q And are you familiar with his practice and also with his representation in the community?

A Yes, sir.

Q Are you also on the staff of any hospitals?

A Yes, sir.

Q And what hospital?

A Jersey Shore Medical Center.

Q Have you been to the doctor's office?

A Yes, sir.

Q And can you just tell us, Doctor, what Dr. Vaccaro's representation is in the community and in the area of Asbury Park insofar as a medical practitioner?

A Medically he's probably one of the hardest working people I know. He starts his hours somewheres around 12 and ends in the morning. He's the only one I know that has hours Saturdays, Sundays, Christmas, New Years and Yom Kippur.

Q Is there a need in the community for Dr. Vaccaro and for his treatment?

A Is there a need? There's even a greater need right now. We had two great guys within the last two years leave. We had two general practitioners and it's just adding an extra burden on Henry. I don't do general practice; Henry (181) does.

Q Doctor, insofar as the medical community is concerned, do you know the doctor's representation insofar as his medical practice is concerned and his care for patients, his ability as a doctor?

A I can say Henry sends me some work and at all times he's been a very conscientious person, and in fact, if I forget to call him, he calls me. He happens to be a very conscientious individual and I think he does a great job.

Q Doctor, on any occasions when you have been to the doctor's office, have you found it to be anything but a

medical office where patients who have medical problems are treated for them as opposed to an office where persons hang out and who come merely for drugs or narcotics?

A Doctor is a very unusual individual. As far as I know he's got the busiest general practice in Asbury. He's also a politician. But as far as narcotics and drugs, I can honestly say I have never seen Dr. Vaccaro's patients in the hospital or in my office that are addicts. I think he practices a reputable brand of medicine.

Q And Doctor, with respect to any political situation that the doctor was involved in in the past, you're familiar with the political situation in Asbury Park and the fact that Dr. Vaccaro has not run for reelection in the City of Asbury Park?

(182) A I have been familiar with politics since my father was in Asbury.

Q And is it a fact he's declined and is no longer in politics?

A I don't know how he did it before. I don't know why he wanted it except it was a hobby with him.

MR. SHEBELL: I have nothing further.

DR. ALBANO: All right, Mr. LaBue.

CROSS-EXAMINATION BY MR. LA BUE:

Q Doctor, where do you live?

A Oakhurst, New Jersey.

Q You have indicated that you have been to the doctor's office. When was the last time you were there, sir?

A I probably dropped some pathological reports off a month or two months ago.

Q Prior to that, can you recall approximately the time before you were there?

A Periodically Henry lets his reports stay in his box in the hospital. If I want to leave him a note, I'll take all his stuff out of there and ask him why he doesn't clean the box out. I don't know the exact date.

Q Were you there during 1972?

A I'm sure I was there.

Q Were you there from— as an example—June to (183) October of '72?

A I honestly don't know the exact date.

Q But you could have been?

A Surely.

Q When you would have occasion to visit the doctor, approximately what time would that be, sir?

A Probably after my office hours—6 o'clock—on the way home, maybe stopping back from the hospital to stop in and say hello.

Q And on those occasions when you have had a chance to stop by, have you found his office very busy?

A I have found kids, mothers there, busy as can be no matter what hour it was.

Q Have you also, or if you recall, were there a lot of young people there too?

A He does pediatrics.

Q When I say young people, I'm talking between the ages of 17 and 18 and 25.

A I really wouldn't know. I never observed.

Q Have you ever had occasion to become aware of any information concerning the doctor's testimony in Court in the Asbury area concerning people who have been apprehended and charged with the possession of a controlled substance, and whereupon the doctor would appear and testify that he gave them the prescription and it was a valid prescription?

(184) A No sir, I have no connection with that. I'm a police surgeon in Ocean Township and I have never had any connections with that.

Q Does Ocean Township have a drug problem, the nature of which is prevading our society presently?

A We have a drug problem in any of the communities around here. Our high schools, and even our grade schools now have marijuana and other stuff.

Q Is part of that drug problem the utilization by a lot of young people—I'm talking about high school age and possibly high school?

A That's all you have in high school.

Q Drugs other than marijuana? I'm talking about pills; Biphetamines, Tuinals, Parest. Have you had experience to come across a situation like that?

A We have it not only among the students, but some of the teachers as well in Monmouth College.

Q Have you ever had occasion to determine the source of that supply with respect to anyone that has come to your attention?

A No.

Q Haven't you ever wondered where they come from?

A Yes, we try to get the source a lot of times. On many occasions we'll pick up narcotic addicts and we had

a couple of raids on our motels and picked them up there, (185) released, and the next time in Long Branch. The same crew—it drives you up a tree.

Q You have been unable to pin down the source?

A That's correct.

Q How long have you been a police surgeon?

A For the last 10 years. I do their preemployment and comp work.

Q During the period of time, roughly during the last four or five years, have you had the occasion during your official duties to come across a situation or come upon a situation of an apparent drug abuser with respect to the young people we have been discussing and been able to ascertain in any event the source of some of the items being abused? I'm talking about controlled items?

A We've tried.

Q Have you ever found a vial with a prescription in it or a vial or an envelope with the doctor's name on it?

A We used to find vials with drugs on them. I'm sure they're still at Police Headquarters and we have asked the doctors.

Q Have you ever had occasion to ask Dr. Vaccaro whether or not he ever prescribed something for a person that you have come in contact with?

A A couple of the cases I referred to were not Dr. Vaccaro; they were other physicians in the Spring Lake area.

(186) MR. LaBUE: That's all I have.

MR. SHEBELL: That's all. I have nothing further.

DR. ALBANO: You may go, Dr. Stevens, and thank you.

Call your next witness, Mr. Shebell.

EDWARD R. ENGLISH, Sworn.

DIRECT EXAMINATION BY MR. SHEBELL:

Q Mr. English, where do you live?

A Asbury Park.

Q How long have you lived there?

A Almost all my life.

Q Approximately how many years is that?

A Fifty-five years.

Q And do you hold any office in the government?

A Yes, I do. I'm a Councilman in the City of Asbury Park and have been for the past eight years and have been just reelected.

Q And what is your employment, Mr. English?

A Right now I'm retired from the Board, but right now I'm working for the New Jersey State Racing Commission.

Q And Mr. English, are you familiar with and do you know Dr. Vaccaro?

(187) A Yes.

Q And with respect to Dr. Vaccaro, do you know of his work and of his practice of medicine in the Asbury Park area and community?

A Yes, I do. I have known of many times that I have had calls at my house for a doctor in the City of Asbury Park. I couldn't get a doctor anywhere and I called Dr. Vaccaro to try to help them. He would come out and take care of them. I called the police to get a doctor.

You couldn't get a doctor. Just recently we have lost a few doctors in town and the doctor has been always willing to help people all the years I have known him. The doctor's brother, Sebastian, was the same way. A very charitable man; helped people even if they couldn't pay the fee. He did it just out of the goodness of his heart and that's known throughout the town.

Q Would there be an impact on the Asbury Park area which would be deterimental to the community if the doctor couldn't practice medicine?

A Yes, because there wouldn't be anybody to take care of the people that really need the care that the doctor would give them.

Q Do you feel the doctor does that; he takes care of people who medically need him?

A Yes.

(188) Q Are you aware of any problem, any large problem, insofar as the doctor is concerned, of any drug abuse that he has been the instigator of in the area?

A No, I have never heard it and never seen it. He's widely respected in the community. I sat next to him for the past eight years. I have observed him, worked with him in the best interest of the community. The time he spent not only with the community, but with his practice, it's unbelievable as far as I'm concerned. How he did it, I think that's one of the reasons his late brother is in his grave.

MR. SHEBELL: I have nothing further of Mr. English.

DR. ALBANO: All right, Mr. LaBue.

CROSS-EXAMINATION BY MR. LaBUE:

Q Sir, if I may, what positions do you hold or have you held as a Councilman in Asbury Park in the City government?

A We have a City Manager form of government. We set the policy for the City Manager. I hold no specific department.

Q Have you been associated or affiliated with any particular department or commissions within city government as part of your duties as a City Councilman?

(189) A Outside of being on the School Board of Estimate no ,sir.

MR. LaBUE: I have no further questions.

MR. SHEBELL: I have one more question.

REDIRECT EXAMINATION BY MR. SHEBELL:

Q Mr. English, does any member of your family have any connection with Ocean Township?

A Yes, I have a son Richard. He's the Councilman in Ocean Township.

Q And if there was any problem in Ocean Township insofar as drugs being available to younger people through Dr. Vaccaro, would you have knowledge of it?

A I would say I would hear about it.

Q Have you heard anything about it?

A No, sir.

MR. SHEBELL: That's all I have.

MR. LaBUE: I have a few more questions.

RECROSS-EXAMINATION BY MR. LaBUE:

Q Let me ask you this. During the summer months when a town such as yours along the Jersey Shore receives a great influx of people from all over this state and from out of this state, has there ever been, to your knowledge,

any problems that have come to the attention of you in your (190) capacity as a Councilman concerning drug abuse generally? I'm talking about young people, perhaps being arrested for being under the influence or for police activity with respect to a complaint of that nature?

A Not to my personal knowledge, no.

MR. LaBUE: I have no further questions.

MR. SHEBELL: That's all I have.

DR. ALBANO: Thank you, Mr. English.

Mr. Shebell, any more witnesses?

MR. SHEBELL: I have one more witness.

REVEREND RUFUS C. GOODMAN, Sworn.

DIRECT EXAMINATION BY MR. SHEBELL:

Q Where do you live, sir?

A 45 Ridge Avenue, Neptune, New Jersey.

Q Where is Neptune, New Jersey with regard to Asbury Park?

A It's an adjacent municipality to Asbury Park.

Q 45 Ridge Avenue is how far from the Asbury Park line?

A Two city blocks.

Q And what do you do, Reverend, insofar as any service in the community such as churches and things of that nature?

A Number one: I'm pastor of the Mount Carmel Baptist (191) Church which has 300 or more parishioners. I'm Director of the Regional Office of the Antipoverty Program for Monmouth County.

Q Reverend, do you know Dr. Vaccaro?

A Yes, I do.

Q How did you come to know him?

A I came to know him through a patient, my wife, quite some years ago.

Q And are you familiar with the service, if any, that Dr. Vaccaro provides to the community in and about Asbury Park?

A Yes.

Q And can you describe for us what service the doctor provides?

A Well, let me say this: in my position as pastor, many of my parishioners have been recommended to the doctor and he has served many of them. Certainly as a Director of the Antipoverty Program, having people of all caliber, mostly poor, of all races and creeds and colors, I refer these people to the doctor. Many of them were people who could not pay; who were too sick to pay for the appointment, older people who needed his services and that is my reason for referring them to the doctor. I have known the doctor for some 18 years. Many of the doctors you have to get appointments regardless of your condition and you have to wait. (192) Dr. Vaccaro never turned them down as long as they had time to wait for treatment. He treated these people with or without money; poor people, old, young or whatever it might be. It was a pleasure. It helped me because, as I said before, my job is working with people who have problems, and of course, I was privileged to have been able to refer these people to the doctor.

Q Reverend, according to your experience and your knowledge of what you have seen insofar as the patients

you have referred to the doctor and what you have heard from the patients of the doctor, persons who know him in the area, have they been satisfied with the caliber of the medical care and the treatment that they have gotten?

A They certainly have.

Q And with respect to Dr. Vaccaro in his practice, have you heard of any problems in the area caused by the doctor insofar as making people narcotic addicts or any problem of drugs in the area originating from the doctor or because of the doctor?

A Never.

Q Revered, insofar as the community in the area is concerned, would there be any effect if this Board were to revoke the doctor's privilege and license to practice medicine in this state? Would there be any effect on the community and the area, and if so, what?

(193) A Yes, it would be a tremendous effect in this respect. Now there are thousands of people who have been served and treated by the doctor and still are being treated. If this doctor was to be taken from the community where he's privileged to treat the people, they're not only a few people, there are thousands of people of all ages, creeds and colors who would suffer and who would not, under any terms, be able to get this treatment because other doctors don't just go out. You can get them only by appointment. These other doctors—most of them are not going to wait for the money. If you don't have the money, you don't get treated. These are people who—I'm not speaking from hearsay—but I'm speaking of some 3,000 or 4,000 poor people and people who need help. I say it from experience, exposure, and knowing there's a need. If the doctor is taken away, this is jeopardizing the health and lives of many in the community not only Asbury but Neptune and the adjacent communities about.

MR. SHEBELL: I have nothing further.

DR. ALBANO: All right, Mr. LaBue.

CROSS-EXAMINATION BY MR. LaBUE:

Q Reverend, you have indicated that you're pastor of the Mount Carmel Baptist Church?

A Yes.

(194) Q Have you had any formal training, sir?

A In what respect?

Q With respect to formal education beyond high school to include ultimately being ordained as a minister?

A Yes.

Q Could you give us the benefit of that training, if you would?

A When you say the benefit, do you mean the breakdown?

Q Yes. Where were you trained and when did you move to the Neptune area?

A I moved to Neptune—well, I would say about 16 years ago. Prior to that, let me give you a breakdown. Prior to that I went to grammar school in Virginia, high school in Virginia, a year and a half in the Hampton Institute in Virginia and three years in Trenton for theological training. Of course, I have had a great deal of training in the kind of social work I'm doing through programs that were provided by the Federal Government, funds that were set up by the government.

Q You have been in the Neptune area about 16 years?

A I have been in the Neptune area—the Asbury Park and Neptune area—I have been here for 30 years.

Q And did you do anything before you became associated with this church in terms of social programs?

(195) A Well, as a minister—I was a minister long before I became a pastor. I have been doing social work for about 20 years.

Q You have about 20 years of social work generally?

A That's right.

Q I imagine that during that period of time you have had extensive contact with young people, is that right?

A I certainly have.

Q And I further imagine that as part of the church, presently you have extensive and direct contact with young people, is that correct?

A Yes.

Q Reverend, has there ever been any information that's come to your attention concerning drug abuse problems by young people generally?

A Yes.

Q Then, you recognize and you're aware that some young people today, and even for the past five or 10 years, may have had a serious drug abuse problem, is that correct?

A Yes.

Q During your experience with people of that nature have you ever had an opportunity to ascertain the source of any of the drugs that the young people were abusing?

A No, I have not.

Q Have you ever had any direct contact with any (196) young individual that had indicated to you that he was abusing drugs?

A Oh, yes.

Q Have you ever asked them for their source?

A From where they got it?

Q Yes.

A No.

Q Of course, with a view toward helping them remove themselves from the category of a drug abuser, you know that's why the question was asked. Then, is it your testimony that in light of all of your experience you never had an occasion to find out where any of these items that are being abused originated?

A Let me say this, sir. The fact is in the area where I live, youngsters freely come up and are open about these things. They never really told me from where they got it. In fact, I know there's plenty of it in the streets. It's been peddled in the street there, I know. Of course, I didn't make it my business to search out anyone because my job was to counsel and try to help those that already had been involved or, shall we say, addicted, and then, prevention because they came to me. I counsel many, but to seek the source, I never did that.

Q Let me indicate that I agree, but I just can't help but think how wonderful it would be if we could remove (197) the source.

DR. ORNAF: May I ask a question?

DR. ALBANO: Go ahead.

DR. ORNAF: I realize in the past years the physicians have done a lot of charity work and free work. I know that because I have practiced for 39 years, from the start of depression. You have a lot of experience. Do you find in the last couple of years with government and state aid

and so forth and welfare and health care that there are still a lot of people that are without a source of payment to a physician?

THE WITNESS: Now, would you repeat that question, sir?

DR. ORNAF: In this day and age many a physician is given a lot of time and has not charged for the services because the patient could not afford it.

THE WITNESS: That's correct.

DR. ORNAF: Now, in this day and age with governmental programs and medicaid and so on, do you find there are a lot of people that have nothing to rest on as far as medical payment is concerned?

(198) THE WITNESS: I do, sir.

DR. ORNAF: In spite of programs?

THE WITNESS: I do.

MR. SHEBELL: I would like to ask a few more questions.

REDIRECT EXAMINATION BY MR. SHEBELL:

Q You have made reference in response to the questions from the Attorney General as to the large number of young people who have drug problems in our area. What are the drugs which they are addicted to and having problems with, Reverened?

A Well, from what I learned through counsel and questioning of those who come to me, it's what's called pot to the hard drugs.

Q Hard drugs, you say?

A Yes.

Q You're referring to heroin and cocaine?

A Yes.

Q What is the source where they're coming from?

A From the information that I get they're being brought in from other areas as far out as New York.

MR. SHEBELL: I have nothing further.

MR. LaBUE: I have a few more questions.

RECROSS-EXAMINATION BY MR. LaBUE:

Q Reverend, let me ask you this. You have been (199) involved in these programs for 20 years as you have indicated, and you have done some traveling. I think you indicated you did some studying in the Trenton and Asbury area. During that extended period of time wherein you have been involved with social work, have you ever come upon an occasion where drugs didn't come in from another area? Isn't it amazing.

A It's rather difficult to give you an answer because as I said before, when you start to ask the fellows where they get it, you turn them off, so I kind of steered away from trying to find out.

Q Don't misunderstand me. Once they feel you have betrayed their trust, you can no longer be effective, is that correct?

A That's correct.

Q I fully appreciate that.

MR. LaBUE: That's all. Thank you very much, Reverend.

That's all I have.

MR. SHEBELL: Thank you very much.

DR. ALBANO: Thank you, Reverend, have a safe trip home.

MR. SHEBELL: There are no other witnesses we're going to produce. There are others from the number you have seen around, but I think there's no need for that. I'm ready for (200) summation.

Gentlemen, you know from my position on the outset of our problem insofar as the defense of this where we have had to hear the testimony of persons who have testified on behalf of the State and accept it at face value without the benefit of hearing from the doctor or his office personnel. I can imagine that has an effect insofar as your overall opinion of the case is concerned which is probably detrimental to the doctor because I think that you can't get the entire picture under the circumstances. Really, I think you can gather from the witnesses you have come here and testified and what you have seen here today that there's certainly a great need for the doctor in our area. I don't know what your findings will be and what your feelings are as to the gravity of the charges here. I think you must though, of course, review them in the light of what they are with respect to the type of situation we have with an undercover agent or person connected with the State coming into the doctor's office, and as they testified, their purpose is to bring about a purchase of (201) a drug. I think you can see from their testimony too that they were not out to give the doctor anything in the way of complaints or to cause the doctor to examine them, although he expressed a desire to examine them at least as far as Mr. DeMaeo was concerned. Mr. DeMaeo didn't want that. He wanted to make a buy drugs, to make out a report, and he went at length of lying insofar as saying he apparently attempted to convince the doctor that pills had been lost and stolen and things of

that nature, made contact with the personnel in the doctor's office, getting to them on a friendly and money basis, and promising them money and things in order to get drugs from them. I think you can see from the reports of the investigators that what came about was a situation where there was actually a specific plan and plot by the persons in the doctor's office to keep him from the fact that on certain occasions drugs had been dispensed without the doctor's knowledge, a complete absence of it showing on the doctor's record as to the fact that on certain occasions the girl would duplicate the prescription for money, not enter (202) it, and not turn in the money. It's not on the record. This was something which I submit the doctor had no control of and reflects badly as far as the use of the hypothetical question when the hypothetical assumes that the doctor had knowledge of what the persons were deliberately trying to keep from the doctor in the way of illegal activity. I think it's significant that you have records here that came from the doctor's office pursuant to a warrant and they're records which have notations made insofar as prescriptions of drugs by the doctor along with the date of them, the amount of them and the manner to be used and the charge made by the doctor for them. Certainly, if there were any improper or illegal motive in dispensing these other than in good faith, I submit there would not be a record of it. He would not have kept the records he did and would not have a listing of the moneys he made from it and the actual records of charges made.

I can certainly appreciate the concern of the State and this Board that our young people are protected, that the public is protected. I'm certainly sure you can appreciate too that (203) the community as a whole needs the doctor insofar as his medical treatment is concerned. I think if this Board, based upon all the evidence, concludes

that the doctor has been guilty of breach insofar as the proper standard is concerned, I think the Court should take into view that what breach may have occurred was for reasons other than evil or malintent or the idea of making a profit here. There are problems insofar as the extent of the doctor's practice; the fact he was too busy involved in politics. The doctor is out of politics and no longer in it. The doctor will abide by any decision of this Board insofar as any restrictions on the practice so that there will be no prescriptions or dispensing of any controlled dangerous substances. The desire of the doctor to solely serve the sick of the community and to merely take care of sick patients and any aspect of practice that involves the type of situation of treating obesity or other conditions such as has been brought to light here which would require controlled dangerous substances—he's willing to abide by any restrictions the Board would impose on (204) him along those lines.

I woud ask the Board to consider the need of our community; the valuable part the doctor plays in the community. The testimony has been presented here from laymen and Dr. Stevens. The doctor is a good doctor insofar as treating sick people, extending himself, time, hours. He puts no personal limitation on the time he spends with patients in the office, in the hospital, at the home. I really ask and I'm certain you will give it your full consideration and put it in the proper prospective and that is what we're hearing today is a very small part of what was involved insofar as the good the doctor has done. I think part of his problem is he tries to help everybody. You can't do that anymore in this day and age. I'm certain you can tell from the people who have testified that the doctor is honorable; he's honest; he'll abide by whatever restrictions the Board puts on him and not violate any restrictions the Board puts on his practice of medicine.

I thank you for your entire day we have taken up here.

(205) MR. LaBUE: Members of the Board, Mr. Shebell, I think that during the course of this hearing it has been demonstrated conclusively that the complaints as filed alleging 39 counts of dispensing and/or prescription drugs with a high abuse potential has been established and met. The acts complained of in the Complaint are of a nature of which go to the very heart of the practice. A licensed physician in the state occupys a very unique position in the community. He's a person who is generally looked up to and in many instances revered. He generally is left free to establish his own standard, of course consistent with his education and training, with respect to the practice of medicine. When a physician by virtue of his license is enabled and impowered to become a licensee with respect to controlled substances, both on a state and Federal level, I feel, and I feel very strongly, that he assumes an even higher burden. The very nature of the term controlled substance indicates that these items are items generally which have a high abuse potential. In addition to that, there are other prescriptions, legends, items such as items that (206) were alluded to during the course of the testimony that further indicate that they should be used and used with caution in only areas where they are medically indicated and justified and where a complete and total physical examination and history has been done. I think the testimony graphically demonstrates that that was not the case here. During the total of 45 attempts, the people that testified were able to purchase items on no less than 39 occasions. Of course, I'd like to call your attention to the fact that the two young men indicated they were each refused three times. Even though that is the case, the testimony reflects rather clearly that they were able to purchase almost 1600 Biphetamines, about 270 Parest, and 290 units of Tuinal. There

is also futher testimony to indicate that during the course of the operation by my office, well in excess of 100,000 units of Biphetamines or amphetamine compounds were removed from the doctor's office.

I have searched long and hard to try and determine what would or could probably motivate a person that someone could speak so highly of. We sat here and listened to them. (207) We heard testimony by the witnesses for the State. The only conceivable motive I think that could even be considered would be the price factor. It seems that a bag is worth $8; two bags are worth $16; a prescription is worth an extra $2.

I find that posture totally irreconcilable with respect to the standard a physician must hold himself with respect to his ministration to the sick.

To that extent, insofar as I feel that we have met our burden and we have demonstrated there has been a violation of New Jersey Statute 49:9-16(h) I urge this Board to take the necessary action to revoke the license to practice medicine and surgery of Dr. Henry Vaccaro.

DR. ALBANO: I'll entertain a motion we go into Executive Session.

DR. BALSAMO: So moved.

DR. ALBANO: Thank you, Mr. Shebell.

(At this time the Board went into Executive Session.)

* * *

Final Decision and Order of State of New Jersey Department of Law and Public Safety Division of Consumer Affairs Board of Medical Examiners

(Filed June 14, 1973)

This matter comes before the New Jersey Board of Medical Examiners on the complaint of Anthony J. Balsamo, Secretary of said Board, seeking suspension or revocation of the license to practice medicine and surgery in the State of New Jersey of Henry J. Vaccaro, M.D. Anthony J. Balsamo executed and filed the complaint herein in his official capacity as the secretary of the Board of Medical Examiners. Henry J. Vaccaro, M.D. (hereinafter respondent), was on or about November 10, 1948 issued License No. 12822 to practice medicine and surgery by the New Jersey Board of Medical Examiners and at all times mentioned herein respondent was, and now is, licensed to practice medicine and surgery in the State of New Jersey. The complaint, as amended, alleges that between the dates of March 10, 1972 and November 21, 1972, the respondent dispensed, distributed and prescribed certain controlled dangerous substances and prescription legend drugs, to wit: Biphetamine 20, Biphetamine 12 1/2, Parest 400, Tuinal, and Obedrin LA with high potential for abuse without medical indication or medical justification, with apparent lack of regard for the significant abuse potential of these substances and with gross disregard for the life, health, safety and welfare of the person for whom the said drugs were prescribed or dispensed. The complaint further alleges that such practice constitutes gross malpractice or gross neglect in the practice of medicine which has endangered the health or life of any person, all in violation of N.J.S.A. 45:9-16(h).

The complaint and notice of hearing were issued by the Board and served upon the respondent on November 28,

1972. The return date thereof was December 13, 1972. Upon application by counsel for respondent, the December 13, 1972 hearing date was adjourned. A hearing date of May 30, 1973 was set by the Board and respondent notified by letter dated May 2, 1973. Counsel for respondent by letter dated May 4, 1973 requested that the administrative hearing be adjourned until a date subsequent to the trial of a criminal matter arising out of circumstances similar to the allegations in the complaint herein which is presently pending. On May 7, 1973, counsel for respondent was advised that his request for an adjournment had been denied. On May 24, 1973, respondent applied to the Superior Court, Appellate Division for a stay of the hearing. The motion was denied on May 25, 1973. Respondent then applied to the New Jersey Supreme Court for a stay of the within proceeding. On May 29, 1973 that application was denied.

On May 30, 1973, hearing was held at which respondent appeared with counsel. Counsel for respondent sought an adjournment of the hearing pending disposition of an indictment which we are informed by respondent's counsel was handed down by the Monmouth County Grand Jury alleging, in addition to other charges three (3) charges based on conduct similar to charges contained in the complaint herein. The motion for adjournment was denied. Thereafter counsel for respondent moved to have the public excluded from the hearing. Respondent's motion for an in camera hearing was granted. Respondent, through counsel, cross-examined the witnesses who testified to prove the charges and then presented three (3) character witnesses.

The testimony offered in support of the allegations set forth in the complaint, which in our view was in no material way contradicted on cross-examination shows the following events:

On April 3, 1972, Mrs. Linda Rutz, an investigator in the Enforcement Bureau, Division of Consumer Affairs, went to Dr. Vaccaro's office in Asbury Park, New Jersey. Investigator Rutz used the name Linda Hamlett and told the doctor that she worked for the telephone company from 11:00 P.M. to 7:00 A.M. and wanted a prescription for Obedrine LA to help her stay awake. After a female employee weighed her, took her temperature and her blood pressure, the doctor told the investigator that he would give her the prescription for her weight. Dr. Vaccaro wrote out the prescription for 30 Obedrin LA tables and charged the investigator Eight ($8.00) Dollars.

Mrs. Rutz returned to Dr. Vaccaro's office on April 17, 1972. She had her temperature taken and was weighed by a female employee. Upon seeing the doctor, the investigator requested another prescription. The doctor indicated that he would instead give her something from the office and he instructed a female employee to give her Biphetamine 20's. The doctor required the investigator to have her driver's license photostated. The witness' patient file which was introduced into evidence contained a photostat of a driver's license bearing the name Linda Hamlett. The investigator then received 28 Biphetamine 20's and was charged Eight ($8.00) Dollars. The investigator returned to the Doctor's office on May 2, 1972 and for Eight ($8.00) Dollars received 28 Biphetamine 20's from a female employee on the doctor's instructions. No physical examination was given. On May 18, 1972 Mrs. Rutz returned to the doctor's office, was weighed by a female employee and again received 28 Biphetamine 20's on the doctor's instruction. She paid Eight ($8.00) Dollars. On June 6, 1972 the investigator returned to the doctor's office and received 28 Biphetamine 20's from a female employee at the doctor's instructions for a fee of Eight ($8.00) Dollars.

The investigator returned to the doctor's office on July 11, 1972, was weighed by a female employee and received from the said employee 28 Biphetamine 20's for a fee of Eight ($8.00) Dollars. Mrs. Rutz returned and the above procedures recurred on the following occasions:

DATE	MEDICATION	PRICE
July 26, 1972	28 Biphetamine 20's	$ 8.00
August 9, 1972	28 Biphetamine 20's	8.00
August 24, 1972	56 Biphetamine 20's	16.00
September 13, 1972	56 Biphetamine 20's	16.00
September 28, 1972	56 Biphetamine 20's	16.00
October 13, 1972	56 Biphetamine 20's	16.00
October 26, 1972	56 Biphetamine 20's	16.00
November 9, 1972	56 Biphetamine 20's	16.00
November 21, 1972	56 Biphetamine 20's	16.00

The patient file bearing the name Linda Hamlett which was received in evidence corroborated that on most occasions the extent of any examination was that the patient was weighed. The file also showed the drugs prescribed and dispensed and the amount paid.

Investigator David Moore testified that he went to Dr. Vaccaro's office on June 15, 1972. He was weighed and had his temperature taken by a female employee. He further testified that the doctor took his blood pressure and placed a stethescope on his back. The investigator used the name of David Williams and gave his address as 622 Springfield Avenue, Newark, New Jersey. He testified that he told the doctor that he was a musician and needed Biphetamine 20's to help him stay awake and make him feel good. He was required to show his driver's license which was photostated with the copy placed in his file, The doctor instructed a female employee to give investi-

gator Moore 28 Biphetamine 20's. He was charged Eight ($8.00) for the drugs and Eight ($8.00) Dollars for the visit.

The investigator returned to Dr. Vaccaro's office on June 26, 1972 and received 28 Biphetamine 20's from a female employee on the doctor's instructions. He testified that he paid Eight ($8.00) Dollars and that no examination whatsoever was conducted. The testimony of investigator Moore further indicated that the above conduct recurred on the following visits with the indicated results.

DATE	MEDICATIONS	PRICE
July 6, 1972	28 Biphetamine 20's	$ 8.00
July 21, 1972	refused admittance to Dr.	
July 27, 1972	28 Biphetamine 20's Prescription for 30 Parest 400	13.00
August 3, 1972	28 Biphetamine 20's Prescription for 30 Parest 400	13.00
August 10, 1972	refused admittance to Dr.	
August 21, 1972	28 Biphetamine 20's 28 Biphetamine 12 1/2 Prescription for 30 Parest 400	18.00
August 30, 1972	refused admittance to Dr.	
September 5, 1972	56 Biphetamine 20's Prescription for 20 Parest 400	18.00
October 4, 1972	56 Biphetamine 20's Prescription for 30 Parest 400	18.00
October 18, 1972	56 Biphetamine 20's Prescription for 30 Parest 400	18.00

Investigator Moore testified that on October 25, 1972, upon seeing the doctor, the doctor told him that he could not give him Biphetamines as "the law as after him because a woman named Millie had taken an overdose" The doctor then gave investigator Moore a prescription for 20 Parest 200 caps. and charged him $2.00. The testimony further showed the following visits with the indicated results which also occured without physical examination.

DATE	MEDICATION	PRICE
November 2, 1972	28 Biphetamine 20's Prescription for 20 Parest 400	$15.00
November 15, 1972	28 Biphetamine 20's 28 Biphetamine 12 1/2 Prescription for 30 Parest 400	22.00

The investigator further testified that because he had high blood pressure and a heart murmur he could not take any medication and had been refused life insurance because of his physicial condition.

Investigator Richard Domenic, using the name of Richard DeMaeo, 74 Bay Avenue, Highlands, New Jersey visited Dr. Vaccaro's office on March 10, 1972. The investigator had his temperature taken and was weighed by a female employee of the doctor. The doctor took the investigator's blood pressure, looked into his eyes and mouth and checked his chest and back with a stethescope. The investigator testified that he told the doctor that he was a student and he wanted something as he had an examination to take and he wanted something to keep him "up." The doctor instructed the female employee to give the investigator 28 Biphetamines 20's. The investigator was charged Eight ($8.00) for the visit and Seven ($7.00) for the drugs.

The investigator returned to the doctor's office on April 3, 1972 and after the doctor checked his pulse, the doctor instructed a female employee to give the investigator 28 Biphetamine 20's. The doctor required the investigator to produce some identification. The investigator showed the doctor a driver's license in the name of Richard DeMaeo. The investigator paid Eight ($8.00) Dollars for the visit and the Biphetamines. The investigator returned to the doctor's office on April 17, 1972 where he was required to produce his driver's license which was photostated by the female employee of the doctor and a copy placed in the patient file. The patient file with the photocopy of the driver's license in the name of Richard DeMaeo was introuced into evidence at the hearing. The investigator received 28 Biphetamine 20's from the doctor without any examination whatsoever and was charged Eight ($8.00) Dollars.

The investigator returned to the doctor's office on May 2, 1972 and on request received from the respondent 28 Biphetamine 20's and a prescription for 30 Tuinal 3 gr. without any examination and was charged Ten ($10.00) Dollars. The testimony further showed the following visits to the doctor's office with the indicated results which occurred without physical examination:

DATE	MEDICATION	PRICE
May 18, 1972	56 Biphetamine 20's Prescription for 30 Tuinal 3gr.	$18.00
June 6, 1972	28 Biphetamine 20's Prescription for 30 Tuinal 3gr.	10.00
June 26, 1972	56 Biphetamine 20's Prescription for 30 Tuinal 3gr.	18.00

DATE	MEDICATION	PRICE
July 6, 1972	28 Biphetamine 20's Prescription for 30 Tuinal 3gr.	10.00
July 20, 1972	Refused admittance to Dr.	
July 27, 1972	28 Biphetamine 20's Prescription for 30 Tuinal 3gr.	13.00
August 3, 1972	28 Biphetamine 20's Prescription for Parest 400	13.00
August 10, 1972	Refused admittance to Dr.	
August 14, 1972	Refused admittance to Dr.	
August 21, 1972	28 Biphetamine 20's	
September 7, 1972	56 Biphetamine 20's 28 Biphetamine 12-1/2 Prescription for 30 Tuinal 3gr.	26.00
September 27, 1972	28 Biphetamine 20's Prescription for 30 Tuinal 3gr.	10.00
October 11, 1972	28 Biphetamine 20's Prescription for 20 Tuinal 3gr.	10.00
October 26, 1972	28 Biphetamine 20's Prescription for 30 Tuinal 3gr.	10.00
November 15, 1972	28 Biphetamine 20's 28 Biphetamine 12-1/2 Prescription for 30 Tuinal 3gr.	22.00

The laboratory reports showed that all of the Biphetamines were positive as indicated.

Dr. William Chase was called as an expert witness by the Deputy Attorney General. Dr. Chase stated his qualifications as follows:

Dr. Chase was graduated from Meharry Medical College in 1947, licensed in New Jersey in November of 1948, and had taken postgraduate courses at Seton Hall, Harvard Medical School, Brighman Hospital, Philadelphia Medical College and Meharry Medical College.

In addition to being in private practice and specializing in internal medicine in Essex County for 26 years, Dr. Chase is Director of the Bureau of Health Education Service for the City of Newark Board of Education and was the Medical Director of the Betsy Smith Health Center and Chief of the Chest Disease Clinic at Saint James Hospital. Doctor Chase began his testimony by describing the properties and medically indicated uses of Biphetamine, Tuinal, Parest 400 and Obedrin LA. He testified that each of the drugs had a substantial abuse potential. He testified that Biphetamine has limited medically justifiable uses, namely: an adjunct form of therapy as an appetite depressant in short term weight control; to alter the behavior patterns of hyperkinetic children (from five or six years old to the early teen years); and for the treatment of narcolepsy. See also CFR 21 S 130.46 effective August 8, 1970. He further testified that in order to diagnose narcolepsy it would first be necessary to rule out the existence of illness and disease of a metabolic nature which tend to resemble narcolepsy, such as, the existence of a high blood sugar level which produces drowsiness or the existence of any sedative therapy which would result in a high concentration in the blood stream and therefore produce a physiological action resembling narcolepsy.

He testified that after having ruled out the metabolic or toxic disturbance one would determine by the use of an electroencephologram whether an abnormal brain wave pattern existed which would resemble narcolepsy. He said that such a series of tests could result in a diagnoses being arrived at in two days if the patient was referred to all-day sessions at a diagnostic center.

Dr. Chase was asked a series of hypothetical questions which incorporated the testimony of the three previous witnesses and the evidence presented. The expert indicated unequivocally, that in his opinion the extremely limited physical examination if and when one was conducted and the failure to obtain a detailed patient history and the frequency and quality of drugs dispensed and/or prescribed without any medical indication or justification and the very nature and high abuse potential of the drugs involved, that such conduct constituted gross malpractice or gross neglect in the practice of medicine which endangered the health or life of the person.

FINDINGS OF FACT

On the basis of the testimony and evidence adduced, the Board hereby finds:

1. On the dates of April 3, 1972; April 17, 1972; May 2, 1972; May 18, 1972; June 6, 1972; July 11, 1972; July 26, 1972; August 9, 1972; August 24, 1972; September 13, 1972; September 28, 1972; October 13, 1972; October 26, 1972; November 9, 1972 and November 21, 1972 Henry J. Vaccaro, M.D., or persons under his supervision, direction and control, prescribed, dispensed and sold to Linda Rutz Obedrine LA, and/or Biphetamine 20 capsules on fifteen (15) occasions without conducting a physical examination or taking any medical history prior to the prescription, dispensing or sale thereof. According to the

testimony any purported physical examination was so perfunctory that it was meaningless and cannot be described as a physical examination. More specifically, on the stated dates, we find that on five (5) separate and distinct occasions respondent prescribed or dispensed controlled dangerous substances with a recognized high abuse potential without good medical cause, indication or justification to Linda Rutz and that on ten (10) separate and distinct occasions persons acting on the respondent's instructions who were under his direct and immediate supervision and control dispensed controlled dangerous substances to Linda Rutz, such controlled dangerous substances having a recognized high abuse potential, and such dispensing being without good medical cause, indication or justification.

2. On the dates of June 15, 1972; June 26, 1972; July 6, 1972; July 27, 1972; August 3, 1972; August 21, 1972; September 5, 1972; October 4, 1972; October 18, 1972; October 25, 1972; November 2, 1972 and November 15, 1972, Henry J. Vaccaro, M.D. prescribed, dispensed and sold to David Moore Parest 400 capsules, Biphetamine 20 capsules, and Biphetamine 12-1/2 capsules on twelve (12) occasions without conducting any physical examination or taking any medical history whatsoever prior to the prescription, dispensing or sale thereof. More specifically, on the stated dates, we find that on twelve separate and distinct occasions respondent prescribed or dispensed prescription legend drugs and controlled dangerous substances with a recognized high abuse potential without good medical cause, indication or justification to David Moore.

3. On the dates of March 10, 1972; April 3, 1972; April 17, 1972; May 2, 1972; May 18, 1972; June 6, 1972; June 26, 1972; July 6, 1972; July 27, 1972; August 3, 1972; August 21, 1972; September 7, 1972; September 27, 1972; October 11, 1972; October 26, 1972 and November 15,

1972, Henry J. Vaccaro, M.D. and/or persons under his immediate and direct control and supervision prescribed, dispensed and sold to Richard Domenic Parest 400 capsules, Tuinal 3 gr. capsules, and/or Biphetamine 20 capsules, and/or Biphetamine 12-1/2 capsules without conducting an adequate physical examination or obtaining a medical history prior to the prescription, dispensing or sale thereof. The testimony indicates that the purported physical examination was so perfunctory that it was meaningless. More specifically, on the stated dates, we find that on fifteen (15) separate and distinct occasions respondent prescribed and/or dispensed prescription legend drugs and controlled dangerous substances with a recognized high abuse potential without good medical cause, indication or justification to Richard Domenic. We find that on one (1) occasion an employee of the respondent who was under his direct and immediate supervision and control dispensed controlled dangerous substances with a recognized high abuse potential without good medical cause, indication or justification to Richard Domenic.

4. During direct and cross-examination testimony was adduced which indicated the respondent had been treating investigator Domenic and investigator Moore for narcolepsy. The patient files of the two investigators showed a notation using the term "narcolepsy." The testimony adduced indicated that while the treatment of narcolepsy is one of the limited medical treatments for which Biphetamines may justifiably be indicated (the other two are hyperkinetic behavior in children and short term diet control), it was crystal clear that based on the extremely limited physical examination and history on the initial visit and the lack of any examination thereafter that such a diagnosis could not conceivably have been made.

CONCLUSIONS OF LAW

N.J.S.A. 45:9-16 provides:

"The board . . . may suspend or revoke a license . . . to practice medicine and surgery . . . upon proof to the satisfaction of the board that the holder of such license . . .

10 • • •

(h) has been guilty of gross malpractice or gross neglect in the practice of medicine which has endangered the health or life of any person."

In construing and apply the above cited statutory language, we have recognized that a physician is under a duty to exercise in the treatment of his patient the degree of care, knowledge and skill ordinarily possessed and exercised in similar situations by the average member of the profession practicing in his field. While this is the 20 standard to which a licensed physician is held accountable in civil malpractice actions, we have held that N.J.S.A. 45:9-16(h) clearly requires a finding that the act or omission causing the malpractice to be both "gross" and such as to "endanger the health and life of any person." See In the matter of Jules C. Bigliani, M.D., (Board of Medical Examiners decision September 13, 1972). For the purpose of applying the cited statutory languate to the operative facts established in the instant matter, the term "gross malpractice" requires a finding of a substantial 30 and medically unjustifiable departure from that standard of conduct which the law imposes in civil malpractice actions. In applying this test to the instant facts, it is clear and we so conclude that respondent, on thirty-two (32) occasions, knowingly prescribed or dispensed prescription legend drugs and controlled dangerous substances with a recognized high abuse potential purely for private gain and not incidental to the rendering of medical treatment. That such financially mercenary conduct was contemplated is

clearly established by respondent's failure to adequately examine, when and if any purported examination was given or to extract a medical history of those individuals to whom the drugs were sold or prescribed. We conclude that the frequency and quantity of purchases make it apparent that the drugs were sold solely to be utilized for their abuse potential and not for any medically indicated or justifiable use. It is also clear and we so conclude that on eleven (11) occasions employees of the respondent, who were acting under his direct and immediate supervision and control, dispensed controlled dangerous substances with a recognized high abuse potential. We further find that the frequency and quantity of the prescription and dispensing of these substances clearly indicates a flagrant disregard for the health and welfare of the persons and constitutes the requisite endangerment of the life and health of those persons securing the same. We specifically hold that the practice of dispensing and prescribing controlled dangerous substances each of which possesses a high abuse potential, in contravention of accepted medical practice without good medical cause, indication or justification and without physical examination and the obtaining of a proper medical history constitutes gross malpractice within the meaning of N.J.S.A. 45:9-16(h). See In re Bigliani, supra.

Accordingly, it is on this 14th day of June 1973, ORDERED:

1. Respondent's license to practice medicine and surgery in the State of New Jersey be and hereby is revoked.

2. Respondent shall forthwith tender up his license to this Board and cease and desist the practice of medicine and surgery.

/s/ Edwin H. Albano, M.D.
Edwin H. Albano, M.D., President
New Jersey Board of Medical Examiners

NOTARIZED

Notice of Appeal to Appellate Division
(Filed June 15, 1973)

Notice is hereby given that the defendant, Dr. Henry J. Vaccaro, appeals to the Superior Court, Appellate Division from an Order of the Department of Law & Public Safety, Board of Medical Examiners dated June 14, 1973 ordering that the defendant's license to practice medicine and surgery in the State of New Jersey be revoked and further directing that he tender his license to the State Board and cease and desist the practice of medicine and surgery and take further notice that the defendant files Notice of Appeal based on the refusal of the State Board of Medical Examiners to grant an adjournment and/or stay of the proceedings.

THOMAS F. SHEBELL

By: /s/ Thomas F. Shebell
THOMAS F. SHEBELL, JR.
Attorney for Defendant

Dated: June 14, 1973

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-2968-72

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF

HENRY VACCARO, M.D.

TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY

Notice of Application for Restraining Order and Temporary Stay

(Filed June 15, 1973)

Please take notice that on Friday, June 15, 1973 at 10:00 A.M. or as soon thereafter as counsel may be heard, the undersigned attorney for defendant will apply to the Honorable Robert A. Matthews of the Appellate Division of the Superior Court at his office on Union Avenue, Brielle, New Jersey for a Restraining Order and for a temporary stay of an Order of the Department of Law & Public Safety, Board of Medical Examiners, which Order is attached hereto and made a part hereof; in support of this application, the undersigned will rely upon the attached Affidavit; and,

Please take further notice that the undersigned attorney for defendant will seek an Order restraining any newspaper, radio station of other news media and/or the Board of Medical Examiners from publishing, disclosing or otherwise make available to the press, radio or other news media the Final Decision and Order of the Board of Medical Examiners dated June 14, 1973.

THOMAS F. SHEBELL

By: /s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.
Attorney for Defendant

Notice of Motion for Stay of Order with Restraints
(Filed June 15, 1973)

TO: ATTORNEY GENERAL OF THE STATE OF NEW JERSEY
Attention: Anthony Labue, Deputy Attorney General
1100 Raymond Boulevard
Newark, New Jersey

PLEASE TAKE NOTICE that the undersigned attorney for appellant, Henry Vaccaro, M.D., will apply to the Appellate Division of the Superior Court at such date, time and place as determined by the Court for an Order staying the Order heretofore entered by Edwin Albano, M.D., President of the Board of Medical Examiners, a copy of which is attached hereto and made a part hereof; said application being supported by the certification of Thomas F. Shebell, Jr., attached hereto;

TAKE FURTHER NOTICE that the aforesaid attorney for Henry Vaccaro, M.D. will seek an Order restraining the Board of Medical Examiners and the stenographic reporter who recorded and transcribed the proceedings before the Medical Board from publishing, disclosing, selling or otherwise distributing or making available to the public, press, radio or any news media copies of the final decision, transcript of proceedings or orders of the Board of Medical Examiners.

THOMAS F. SHEBELL
Attorney for Appellant

By: /s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.

Dated: June 15, 1973.

CERTIFICATION IN SUPPORT OF MOTION FOR STAY
(Annexed to Foregoing Notice of Motion)

THOMAS F. SHEBELL, JR., of full age, hereby certifies as follows:

1. I am the attorney for the appellant in the within matter, Henry J. Vaccaro, M.D. and I have handled the matter throughout the proceedings before the State Board of Medical Examiners.

2. Charges involving some thirty-nine counts of alleged violations of N.J.S.A. 45:9-16(h) were served upon Dr. Henry Vaccaro on or about November 27, 1972 and all of the charges involved the dispensing and/or prescribing of medications by the doctor to three undercover agents of the New Jersey Division of Consumer Affairs. The circumstances and facts concerning the activities and transactions between the doctor and the undercover agents are also the subject matter of three counts of an indictment pending before the Superior Court of New Jersey as criminal cases. The doctor is represented by Raymond Brown, Esq. in those proceedings.

3. I applied on behalf of Dr. Vaccaro to the Board of Medical Examiners for an adjournment of the administrative hearing upon the basis that they could not properly be defended in that the doctor could not testify in his own behalf nor could his office personnel because of the facts that the criminal charges were pending and any testimony of the doctor might tend to incriminate him since the same facts to be brought up before the Board were the facts which would be tried and in question in the criminal case. The adjournment was denied by the Board and I then applied for relief to the Appellate Division and was denied and then appealed to the Supreme

Court and was also denied on my application to have the hearing stayed pending outcome of the criminal charges.

4. The hearing before the State Board of Medical Examiners took place on May 30, 1973 and at that time I again requested that the Board adjourn the hearings until after the criminal charges and this request was denied and the matter proceeded on that date. We were unable to present any defense for the doctor in that the doctor could not testify nor could his office personnel because of the pending criminal charges and further I had been advised by the doctor's office personnel that they had in the past while being questioned by members of the State Police and Attorney General's Office been threatened with indictment unless they cooperated. This has placed the doctor's office personnel in a situation where until the criminal charges are disposed of, they are not willing to jeopardize their rights in the matter by testifying.

5. Dr. Henry Vaccaro has been practicing medicine since the date of November 10, 1948 and up until June 14, 1973, at which time, on my direction and advice, his office was closed in that I was informed by the office of the Attorney General that the Board of Medical Examiners had in fact revoked the license of Dr. Vaccaro to practice medicine and had demanded that he forthwith tender up his license to the Board. I advised the Attorney General that I would be applying to the Appellate Division of the Superior Court and such other Courts as might be necessary in order to have the effect of the decision stayed and also to obtain an injunction against publicizing the decision as publication of such decision would have a profound and prejudicial effect upon the criminal case now pending. I was advised by a reporter for the Asbury Park Press when I returned to my office upon June 14, 1973 that Dr. Edwin Albano, President of the State Board of Medical Examiners,

had called him and had informed him of the revocation and suspension of the privileges of Dr. Vaccaro.

6. I have substantial reason to believe that the final decision and order of the Board should be reversed on appeal for many reasons including the prejudicial attitude of Dr. Albano throughout the hearing which is shown by the record of the proceeding, transcript of which has been ordered. Further action of Dr. Albano in reading reports not in evidence took place at the hearing over my objection and the attitude of Dr. Albano was belligerent throughout the hearing and his prejudice and maliciousness is evidenced by the affidavit which he filed prior to the hearing in opposition to the stay requested by the Doctor, wherein he states that the charges if proven, "demonstrate a callous pattern inimical to the health and welfare of those persons to whom he freely sold drugs and to the impact those persons could have on the general public," and he further stated that the charges, if proven, "constitute a reckless endangerment of life and health of the persons . ." Such statements show that Dr. Albano did not have an open mind in the matter and had in fact formed his own conclusion prior to the hearing as to whether or not the conduct charged constituted a basis for the revocation of the license of Dr. Vaccaro. Further, the telephoning of the decision of the Board to the Press further demonstrated his antagonistic position throughout the conduct of this case.

7. The opinion and decision received as signed by the President, New Jersey Board of Medical Examiners, Edwin H. Albano, M.D., no where states therein what the vote of the Board was or whether there was a vote of the Board and it merely states that it is his order and says nothing about about it being the order of the Board upon a proper vote and determination.

8. The opinion as signed by Dr. Albano makes certain statements and conclusions which are unsupported by the record. The opinion states that the drugs were given to Mrs. Linda Rutz, Richard Domenic and David Moore on various occasions by Dr. Vaccaro when in fact the testimony shows that on many of the drugs were given to the investigators by office personnel of the doctor who specifically told the undercover agents that they were doing it for their private motives, without the doctor's knowledge and because of the promises made to them by the undercover agents that they would give them money and the cross-examination and records revealed that on many occasions when drugs were given to the undercover agents by office personnel, the office personnel were keeping the money and also acting with the undercover agents in a secret manner so as to prevent the doctor from knowing that they were getting the drugs and keeping the money.

9. With reference to the statement that David Moore, when prescribed the drugs, was suffering from a heart condition and high blood pressure, there was no competent medical opinion of such fact and objections were made to same and it was only the uncorroborated statement of the undercover agent who was approved for employment with the State of New Jersey that he had any such conditions. All of the undercover investigators had admitted that they had lied at the time when they made the purchases of drugs from the doctor and that on many occasions when they went back to get drugs, they would tell the doctor that they had lost the drugs or that they had been stolen from them and that was the reason that they needed renewal of the prescription before the time it was due. These are statements which were admitted to by the undercover agents on cross-examination.

10. The opinion given by the State's expert witness, Dr. Chase, was based upon a hypothetical question which

was objected to in that it was improper and incomplete and did not contain the facts that the Doctor had not prescribed the frequency and quantity of drugs indicated, rather that his office staff had secretly given them to the undercover agents because of promises of the undercover agents to pay them and to take care of them and because the office personnel were secreting the money and not reporting to the doctor the funds they had taken and the drugs that they had dispensed. Further, it was not included in the hypothetical question that none of the drugs were taken by the patients and that none of the patients demonstrated any adverse signs or indications after being prescribed the drugs and had no adverse effects upon their subsequent visists to the doctor. The conclusion of Dr. Chase based upon a faulty hypothetical question was of no value and, therefore, any conclusions of the Board or any findings of the Board based upon that should also be of no value. Further, the legal definition used by the Board as constituting gross malpractice is not in accordance with any legal precedent but based merely upon their own former decision. Our courts have continuously construed gross negligence or gross malpractice to be such as would require reckless, wanton and wilful conduct of such a character as shows an utter disregard for the safety of others.

11. The transcript will reveal that Investigator Richard Domenic at the time of the hearing was unable to properly answer questions, that he was either under the influence of hypnosis, drugs or otherwise incompetent and request was made at the hearing because of the fact that he was not oriented to have him examined to determine what his problem was, as attempts to question him and make any sense from what he was saying and to get him to understand questions was virtually impossible. The aforesaid witness was in such a state of incompetence at the time of

his testimony before the Board, that any decision based upon his testimony should be reversed.

12. The testimony offered for Dr. Vaccaro consisted of a Councilman of the City of Asbury Park who testified that the doctor and his practice were of good reputation and that there was an urgent need for the services of the doctor in the community and that there had been no problem whatsoever in the community with any treatment rendered by the doctor or any dispensing of drugs by the doctor and that all he had ever heard concerning the doctor or his practice was good and that the doctor performed a great service to the community by the many hours which he worked and the great medical care which he rendered to his patients. A minister from the community testified along the same lines as the Councilman of the City of Asbury Park and stressed the urgent need there was for the doctor's services in the community. A medical doctor practicing in the City of Asbury Park and on the hospital staff where Dr. Vaccaro practices testified that the doctor's reputation is good, that there has been no observing by him of any problems insofar as the dispensing of drugs by the doctor, that he had visited the doctor's office without notice on several occasions and observed no problems in the management or running of the doctor's office.

13. The constitutional rights of the doctor have been infringed upon by taking from him property without due process in that his medical license has been revoked under circumstances which prevented him from having a full and proper hearing, in that he could not take the stand to refute the facts testified to without giving up his constitutional right against self-incrimination. A Board cannot render a fair decision or have a fair hearing until such time as the criminal charges are concluded and the doctor can defend himself and to deprive him of his right to

practice and take away his livelihood in the meantime is a violation of his constitutional rights and further, where after a full hearing it appears that there is no corroboration of the charges, improper basis for rending of an expert opinion in that the hypothetical question was defective and where it appears that there is a substantial basis for the appealing of the decision and of the failure of the Board to grant a postponement, this Court should restrain the imposition of the revocation pending the outcome of this appeal.

14. It was well known to the Board and to Dr. Albano that the very purpose of seeking the adjournment and having a closed hearing on the matter was so that publicity from the hearing before the Board and of those charges which are the same as three counts of the criminal charges, would not prejudice the doctor's rights to a fair trial in the criminal case and notwithstanding that knowledge, Dr. Albano himself called the local paper, the Asbury Park Press to publicize the decision of the Board at a time several hours after the Attorney General's Office had been informed that I would seek a restraint and injunction preventing publicity or release of the decision of the Board until the appeal could be heard. These acts of the Board and Dr. Albano would indicate that further restraints should be granted by the Court, preventing any further statements by Dr. Albano or the Board which would in any way prejudice the right of Dr. Vaccaro to obtain a fair trial in the criminal case if that is at all possible now that the doctor on behalf of the State has made public his comments concerning the alleged actions of the Board.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

THOMAS F. SHEBELL, JR.
/s/ Thomas F. Shebell, Jr.

Dated: June 15, 1973

Proof of Service — Thomas F. Shebell, Jr.
(File Date Not Available)

Thomas F. Shebell, Jr. hereby certifies:

1. On Friday, June 15, 1973 I personally handed a copy of the Notice to Appeal dated June 14, 1973 and the Notice of Application for Restraining Order and Temporary Stay and the Certification in the within action to Anthony LaBue, Deputy Attorney General, State of New Jersey.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Thomas F. Shebell, Jr.
THOMAS F. SHEBELL, JR.

Dated: June 19, 1973.

Proof of Service — Helen M. Lee
(File Date Not Available)

Helen M. Lee hereby certifies:

1. I am employed by Thomas F. Shebell, attorney for the appellant in the within action.

2. On June 15, 1973 at the request of said Thomas F. Shebell, I forwarded a sealed envelope, with postage prepaid thereon, containing a copy of the Notice of Motion for Stay of Order with Restraints, to the Attorney General of the State of New Jersey, Attention: Anthony LaBue, Deputy Attorney General, 1100 Raymond Boulevard, Newark, New Jersey, and on June 19, 1973 I personally spoke with Anthony LaBue and he advised me that he had received the Notice of Motion for Stay of Order with Restraints.

3. On June 19, 1973, I mailed at the Asbury Park Post Office a sealed envelope addressed to Deputy Attorney General Anthony LaBue, 1100 Raymond Boulevard, Room 321, Newark, New Jersey, by Certified Mail, Return Receipt Requested, with postage prepaid thereon, which envelope contained a copy of the Brief in Support of the Motion for Stay and Application for Restraining Order.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Helen M. Lee
HELEN M. LEE

Dated: June 19, 1973.

Order
(Filed June 22, 1973)

This matter being opened to the court on the application of Thomas F. Shebell, Jr., Esquire, in the presence of Deputy Attorney General Anthony F. LaBue, and for good cause shown, it is hereby on this 15th day of June, 1973

ORDERED, that the application for temporary restraining order and temporary stay be denied.

FOR THE COURT:

/s/ Robert A. Matthews
ROBERT A. MATTHEWS
J.A.D.

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

/s/ Mortimer G. Newman, Jr.
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-734

HENRY J. VACCARO,

Petitioner,

vs.

DEPARTMENT OF LAW AND PUBLIC SAFETY
BOARD OF MEDICAL EXAMINERS,

Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

WILLIAM F. HYLAND,
Attorney General of New Jersey,
Attorney for Respondent State Board of Medical Examiners,
State House Annex,
Trenton, New Jersey, 08625.

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel.

ANTHONY F. LABUE,
Deputy Attorney General,
On the Brief.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-5611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-734

HENRY J. VACCARO,

Petitioner,

vs.

DEPARTMENT OF LAW AND PUBLIC SAFETY
BOARD OF MEDICAL EXAMINERS,

Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

Counter-Statement of Questions Involved

1. Should a writ of certiorari be granted to review a refusal to stay administrative proceedings pending disposition of related criminal charges, where allegations of the sale of controlled dangerous substances required prompt disciplinary action in the public interest?

2. Should a writ of certiorari be granted to review a state appellate court's denial of a petitioner's motion to amend his appellate brief to raise an issue of entrapment where the issue is essentially factual and should have been raised in the administrative proceeding from which the appeal was taken?

Counter-Statement of the Case

Petitioner, Henry J. Vaccaro, M.D., was charged on November 28, 1972 by administrative complaint of the New Jersey State Board of Medical Examiners (hereinafter Board) with gross malpractice or gross neglect in the practice of Medicine which has endangered the health or life of any person. N.J.S.A. 45:9-16(h). Specifically, petitioner was charged with delivering and dispensing controlled dangerous substances with a recognized high abuse potential on 42 occasions between March 10, 1972 and November 21, 1972 to three undercover investigators from the Division of Consumer Affairs. Petitioner sought and was granted an adjournment of the scheduled December hearing date. On March 27, 1973 petitioner was indicted in a 17 count indictment.

On May 2, 1973 petitioner was notified by the Board that the hearing would take place on May 30, 1973. Petitioner then requested that the administrative hearing be postponed until the criminal trial had been concluded. The Board denied the request because of the serious threat to the public posed by a physician charged with such wanton and mercenary conduct and advised petitioner that he was not required to testify and that failure to give testimony was "not a ground upon which licensing sanctions or forfeiture may or shall be imposed." The Board met on May 30, 1973 to conduct the hearing and

petitioner again applied to the Board for a stay. The Board indicated that in light of the nature of the charges that he made dangerous drugs readily available on request, it would accept the voluntary surrender, without prejudice, of petitioner's license to practice medicine in New Jersey pending the outcome of the criminal matter. Petitioner refused, his application for a stay was denied and the hearing was conducted.

The three investigators testified at length at the hearing about the ease with which they received controlled dangerous substances from Vaccaro and his staff. One investigator testified that on her first visit she had a limited physical examination and received, on request, a prescription for Obedrin because she "needed them to keep awake." On her next visit, she was sold a "bag of amphetamines," a controlled substance with a high abuse potential. She thereafter received the "bags" either from Vaccaro or at his direction on each subsequent visit without any examination for $8.00 a "bag." The two undercover investigators testified that they were sold packets of biphetamines and prescriptions for Parest 400 and Tuinal with a similar lack of concern for the nature and clear abuse potential of the drugs. One investigator told petitioner that he wanted the drugs to keep him "high" and "awake." He was charged $8.00 for the packet of Biphetamine 20's and $5.00 for the prescription and $18.00 when he received two packages of Biphetamine 20's and a prescription for Parest 400. The other investigators' testimony confirmed the casual attitude with which petitioner sold drugs and the price which was charged.

The investigators testified that they received a combined total of 2,236 pills and capsules on 42 visits to petitioner's office. An expert, a practicing physician, also testified for the State. He testified about the unique prop-

erties of the substances offered in evidence and about the medically limited uses of such substances. The expert testified that the medically indicated uses of Biphetamine is limited to a reducing regimen, as an adjunctive form of therapy to diet—only in cases of exogenous obesity—which results from the compulsion ingestion of food, the treatment of hyperkinetic behavior in children and for the treatment of narcolepsy. The physician also testified that the amounts dispensed were in excess of a medically indicated therapeutic dosage even assuming such therapeutic regimen were justified. He further testified that the amount of Tuinal dispensed deviated substantially from the standard of practice and constituted gross malpractice in the practice of medicine which endangers the life or health of a person. The patient files in evidence showed no suggestion of any patient history of the investigators nor any indication of a physical examination being conducted.

Although petitioner chose not to testify, he consulted with counsel and counsel actively cross-examined the witnesses for the State. Petitioner limited his presentation to three character witnesses.

On June 14, 1973 the Board issued a Final Decision and Order revoking the license to practice medicine in New Jersey of Henry J. Vaccaro, M.D. The Final Decision and Order of the Board was affirmed by the Superior Court of New Jersey, Appellate Division on May 15, 1974. On September 16, 1974 the Supreme Court of New Jersey denied petitioner's petition for certification.

ARGUMENT

POINT I

The Petition for writ of certiorari should be denied since the Board of Medical Examiners properly denied the application for a stay pending disposition of related criminal charges of an administrative hearing involving the sale by a physician of controlled dangerous substances because the public interest required an early resolution of the charges.

The petitioner's request for a stay pending disposition of related charges of the administrative hearing was properly denied by the Board of Medical Examiners. Petitioner, a physician, had been charged by the Board of Medical Examiners with gross malpractice and gross neglect in the practice of medicine for illegally dispensing dangerous drugs. The administrative complaint consisted of charges that petitioner had illegally sold drugs without any medical indication or justification to three investigators. Subsequently, petitioner was indicted and the results of the investigation which was the basis for the administrative charges before the Board constituted three counts of the seventeen count indictment. The trial on the indictment resulted in a conviction of eight counts on May 8, 1974. Vaccaro was sentenced to 22 to 36 years in prison, suspended, 5 years probation and fined $40,000. The trial on the manslaughter count of the indictment which was severed from the trial is pending.

The petitioner argues that it is constitutionally impermissible to conduct an administrative hearing when criminal charges are pending concerning similar conduct as the result is to coerce him "into making a choice between the whirlpool and the rock." (Pb16-14). That con-

tention, if accepted, would grace every licensee charged with a crime affecting such licensee with an absolute

tinue in a regulated area of activity until the criminal matter is concluded. The administrative matter before the Board was grounded on 42 counts of gross malpractice and gross neglect in the practice of medicine which had endangered the health and life of the persons purportedly "treated." The exercise of discretion by the Board in denying the stay was based on a threat to the public welfare that was represented by the complaint before it. The Board's judgment was consistent with decisions by federal courts when applications have been made to stay civil actions pending the completion of related criminal proceedings and consistent with decisions by the Court.

In *Standard Sanitary Manufacturing Co.* v. *U. S.*, 226 U. S. 20 (1912), the issue of the impropriety of contemporaneous proceedings was summarily rejected:

> "The Sherman Act provides for a criminal proceeding to punish violations, and suits in equity to restrain such violations, and the suits may be brought simultaneously or successively. The order of their bringing must depend upon the government; the dependence of their trials cannot be fixed by a hard-and-fast rule, or made imperatively to turn upon the character of the suit. Circumstances may determine and are for the consideration of the court. An imperative rule that the civil suit must await the trial of the criminal action might result in injustice or take from the statute a great deal of its power. Besides a suit by the government, there may be an action for damages by a 'person injured by reason of anything forbidden by the act.' Must

> it also wait? Indeed, the reasons urged for the rule, if logically extended, would compel the post-
>
> until the exhaustion of criminal prosecutions or their expiration by lapse of time. Until either event occurs, the danger of incrimination cannot be said to have passed. It is manifest, therefore, that *the most favorable view which can be taken of the rights of defendants in such situations is that they depend upon the discretion of the court in the particular case.*" (emphasis added) Id. at 51.

Similarly, in *United States* v. *Kordel,* 397 U. S. 1 (1970), the FDA announced that a criminal proceeding would be initiated against the corporation and certain corporate employees shortly after a civil action had been filed. The corporation moved to stay the civil action until after disposition of any criminal proceeding. The district court denied the motion, interrogatories were served and answered without any corporation employee asserting his privilege against self-incrimination, and individual defendants who had answered the interrogatories were convicted on the criminal charges. This Court affirmed the convictions holding that:

> "It would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial." *Id.* at 11.

See also *United States* v. *Blue,* 384 U. S. 251 (1966); *United States* v. *Simon,* 373 F. 2d 649 (2nd Cir. 1967), *cert. granted,* 386 U. S. 1020 (1967), *dismissed for mootness,* 389 U. S. 425 (1967); *DeVita* v. *Sills,* 422 F. 2d 1172 (3rd Cir. 1970).

Therefore, the Board of Medical Examiner's rejection of the petitioner's contention that the Fifth Amendment privilege against self incrimination precludes the State from holding a civil disciplinary proceeding in advance of a criminal proceeding arising out of related events and relieving a person from making the decision whether to testify in the civil matter or to invoke his privilege was squarely grounded on well-established precedent and does not warrant review by this Court.

POINT II

The Court should not grant a writ of certiorari to review the state court's denial of the petitioner's motion to supplement a brief on appeal, because his entrapment defense was essentially factual and therefore should have been raised at the Administrative Hearing.

The refusal of the Appellate Division to permit the petitioner to file a supplemental brief raising the defense of entrapment also does not present a question warranting review by this Court. It is a general rule of appellate practice that ordinarily no issue will be considered by the reviewing court unless raised and argued below. *Fortunato* v. *Ford Motor Co.*, 464 F. 2d 922 (2nd Cir. 1972) *cert. den.* 409 U. S. 1038 (1972); *Deerfield Estates, Inc.* v. *Twp. of East Brunswick*, 60 N. J. 115 (1972). Furthermore, entrapment obviously is a defense which should have been raised in a timely fashion before the administrative agency, since it would be necessary to hear proofs on the claim. Therefore, the grant of the motion to raise this issue for the first time while the case was pending on appeal probably would have required a remand.

In any event, the record which was developed at the hearing unequivocally demonstrates that entrapment as defined by *Sorrells* v. *U. S.*, 287 U. S. 435 (1932) and *Sherman* v. *U. S.*, 356 U. S. 369 (1952), did not occur. No testimony was elicited which even remotely implied that the criminal design originated in the minds of the investigators and that they implanted in the mind of an innocent person the disposition to commit the offense and induced the commission of the offense. The investigators merely appeared at the office of the petitioner, requested the dangerous drugs and gave a non-medical reason for such request. The petitioner was merely afforded the opportunity to sell controlled substances to the investigators. He did not examine the investigators, he did not cause any diagnosis to be made and he freely sold the dangerous drugs at his established prices. Entrapment did not exist.

Further, there is no indication in *Sorrells* and *Sherman, supra,* that the defense of entrapment is of constitutional dimensions; rather, both of those cases considered the defense in the context of the Court's supervisory power over the administration of justice within the federal system.

Finally, it should be noted that since petitioner now has been convicted of violations of a law relating to narcotic drugs, the provisions of N.J.S.A. 45:9-16, which provide for mandatory suspension or revocation upon conviction of a crime relating to narcotic drugs, would now come into play. Therefore, even if petitioner raised questions worthy of this Court's consideration, the question of his right to practice medicine would be moot.

CONCLUSION

It is respectfully submitted that for the foregoing reasons, the petition for a writ of certiorari should be denied.

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